

CODIFICATION DES LOIS  
SIAMOISES : NOTES ET  
CORRESPONDANCE,

AVRIL 1907 - JUILLET 1910



OFFICE OF THE JURIDICAL COUNCIL  
THA CHANG WANG NA,  
BANGKOK 10200, THAILAND.

AC 26

CODIFICATION DES LOIS  
SIAMOISES : NOTES ET  
CORRESPONDANCE,

AVRIL 1907 - JUILLET 1910



OFFICE OF THE JURIDICAL COUNCIL  
THA CHANG WANG NA,  
BANGKOK 10200, THAILAND.

AC 26

Commission  
de  
Codification . -

Notes et correspondance

Avril 1907 - Juillet 1910.

Ministère de la Justice

Bangkok .



**ต้นฉบับไม่มีหน้านี้**

**NO THIS PAGE IN ORIGINAL**



10 3 5 June 1902 3

MEMORANDUM.

In consequence of the provisions made in the last treaty passed between Siam and France, I understand that the Siamese Government would like to have the work of Codification completed as soon as possible, as the giving up of the whole jurisdiction over french ressortissants is now subject to the publication of the several Codes.

I therefore venture to submit to the Ministry of Justice a general scheme for the completion of such work.

The Penal Code may be considered as finished, in so far at least as the Legislative Adviser is concerned. The English draft has been revised and highly improved by the Committee appointed for that purpose under the Presidency of His Royal Highness Prince Damrong. The revised text is being printed. I expect it will be ready in another week or two. The Special Commission entrusted with the writing of the Siamese text will then be able to start work.

Besides the Penal Code, a general Codification must include:-

- A Code of Criminal Procedure,
- A Civil and Commercial Code,
- A Code of Civil Procedure (including procedure in commercial cases)
- A Law of Organization of Courts.

The first work to be taken up now is undoubtedly the Code of Criminal Procedure, which forms the complement and continuation of the Penal Code.

~~4~~ Criminal Procedure is at present

governed in Siam by the "Transitory Criminal Procedure Code" enacted in the year 1896. This act is ~~no more than~~ a short abstract in 40 sections giving ~~more~~ general statements of Law. Its form is so concise that it could not be used as a frame work for the compilation of a new Criminal Procedure Code. It would be impossible ~~to try~~ to classify the various and numerous rules of the present practice under its 40 sections. But, it gives a very clear indication of the general principles on which the Criminal Procedure is now based, and will be of great help in that respect.

With regard to that part of the Criminal Procedure which concerns evidence, the "Law on Evidence" of the year 1895 is a much more comprehensive document, which requires only some amendments or alterations. The matter of Evidence is of course to be embodied in the Criminal Procedure Code.

The matter of a Code of Criminal Procedure is more considerable perhaps than the matter of a Penal Code. The French Penal Code numbers 484 sections. The French Code of Criminal Procedure numbers 643 sections. In Germany, the figures are respectively 370 sections for the Penal Code and 506 sections for the Code of Criminal Procedure. In Japan; there are 430 sections in the Penal Code at present in force, and 480 sections in the Code of Criminal procedure. The Indian Penal Code has 511 sections, the Indian Criminal Procedure Code has 565 sections. In Egypt only, owing to the very simple system of procedure now in force the Criminal Procedure Code numbers less sections than the Penal Code (282 sections against 341).

The revised draft of the Siamese Penal Code contains 338 sections. It is probable that the Code of Criminal Procedure will include from

350 to 400 sections.

Under the title of "Civil Code" or of "Civil and Commercial Code" a very large piece of work is meant. Shortly speaking, such Code is to include:-

- 1.- The law relating to persons.
- 2.- The law relating to property, moveable and immoveable,
- 3.- The law relating to obligations and contracts.

LAW RELATING TO PERSONS.- The law relating to persons deals with

a)- capacity of persons, either natural persons or legal persons or bodies incorporated by law;

b)- nationality, domicile, absence;

c)- marriage, its forms and effects;

d)- property of husband and wife, either personal property or joint property; administration of such properties.

e)- cancellation or dissolution of marriage; divorce;

f)- consequences of dissolution of marriage, settlement of accounts, division of property;

g)- children, legitimate and illegitimate, adoption, rights of parents over their children, guardianship;

h)- inheritance and gifts.

LAW RELATING TO PROPERTY.- The law relating to property deals with

a) immoveable property, its constitution, title deeds, real rights, servitudes, possession, mortgage;

b)- moveable property, possession, pledge.



LAW RELATING TO OBLIGATIONS.- The law relating to obligations and contracts includes:-

a) definition of obligations and contracts, formation of obligations and contracts, effects of such obligations and contracts, termination of same;

b) rules of specific contracts such as sale, sale on trust, exchange, loan, hiring, agency, deposit, suretyship, associations, negotiable instruments, etc.

Several other important matters like insolvency and bankruptcy, privileges, prescription, maritime commerce, insurance, average, etc. are also to be incorporated in the Civil Code and may be ascribed to either the second or the third part. It depends upon what distribution of chapters may be adopted by the Siamese Government and principally upon the distinction or non-distinction of civil and commercial matters.

A Code dealing with the several above-mentioned questions shall constitute a volume of several thousand sections. In France, the Civil Code numbers 2281 sections, the Commercial Code 648 sections, total 2929 sections. In Germany, the Civil Code is 2385 sections long, the Commercial Code 905 sections, total 3290 sections. In Egypt a short summary of Civil and Commercial matters extends over 1476 sections. In Japan, the new Civil Code has 1147 sections, the Commercial Code 1064 sections, total 2211 sections. I cannot venture of course to put in any figure for Siam, even an approximate one, but I am inclined to think that the work will not be complete in less than 3000 sections.


The compilation of a Civil and Commercial Code of over 3000 sections would be a too

considerable task to take it in hand just at one time. It would be easier to take it part by part, ~~thus~~ following a process which has been very successful in Switzerland. The law on obligations and contracts would come first. Then the law on property and afterwards the law on persons and family. It is not of course the logical order of a civil Code, where persons and property ought to be defined and described before obligations, as obligations are the legal connections between persons and property. But it is going from the less difficult part to the more difficult. Law concerning persons and property is very peculiar in Siam if compared with the Western countries where model Codes may be selected. On the contrary, the law on obligations is more uniform all over the world. It is therefore the easiest part to frame. After all, if we are to include in it bankruptcy, negotiable instruments and matters in connection with the maritime trade, it will constitute more than half the whole Civil Code.

Nothing has been done up to now in the way of codifying the Siamese law on obligations and contracts, ~~except~~ ~~but for~~ a draft act in 173 sections concerning ~~the~~ commercial partnerships and companies.

The codification of Civil Procedure is at present most advanced. His Royal Highness Prince Rabbi has completed last year a consolidation of the various acts and regulations dealing with Civil Procedure. A draft act has been so prepared, numbering 143 sections and including all the rules actually followed in the Siamese Civil Courts.

A consolidation of the law of Organization of the Courts in 37 articles has been compiled at the same time.



Both these documents might be promulgated  
now as they stand, and shall constitute a considerable  
improvement in the way of clearness and consistency of  
rules of procedure. But it is probable that after the  
Penal Code, the Code of Criminal Procedure and the Civil  
Code have been promulgated, ~~the rules of civil procedure~~  
a readjustment of the Rules of Civil Procedure will  
become necessary. What alterations will be required largely  
depend upon the course ~~which~~ the French Government  
shall ~~take~~ take regarding several matters ~~to be~~ to which there  
be submitted for its consideration during the compilation  
of the Code of Criminal Procedure and of the Civil Code.  
Anyway, I presume that with a rather little work  
they might be transformed in a Code of Civil Procedure and  
a Law of Organization of Courts as ~~is~~ provided in the  
Franco-Siamese Treaty.



*These documents might be promulgated as they stand now, but whether they will be after the Penal Code, the Commercial Code, etc. and the Civil Code.*

Whether these documents might be promulgated as they stand largely depends upon the course the Government shall take regarding several civil and penal matters which will be submitted for its consideration during the preparation of the Code of Criminal Procedure and of a general scheme of Code on obligations and contracts. Anyway, some adjustment might be necessary to make them consistent with the new Penal Code and with the distribution of Civil and Commercial matters in the Civil Code.

The foregoing indications show that the Penal Code constitutes only a very small part of the general codification. However, when enacted, it will have taken about three years to pass it through; and it must be borne in mind that before the Legislative Adviser took charge of it, a considerable work had already been done in the shape of the draft initiated by a former Commission, taken up conjointly by Dr. Masao and Mr. Schlessner, and completed by Mr. Schlessner. Should we go through the same process for the further Codification, I would not warrant that the Codes will be finished in another twenty years. Taking three years as a minimum for the Penal Code, which includes 338 sections, a complete codification in 4000 sections at least would last ten times more. The slightest drawback of such a lengthy process would be that the work shall have to pass through several hands and will lack harmony.

Under the actual circumstances, the process I would recommend to the Government is the following:-

As aforesaid, the first matter to be

taken up after the Penal Code is the Code of Criminal Procedure.

For the preparation of such Code the following work could be started immediately:

1)- A full translation of all regulations, directions, instructions etc. issued either by the Ministry of Justice or by the Ministry of the Interior in connection with the criminal procedure.

2)- A full statement in writing of the practice actually followed in criminal cases by the Police, the Gendarmerie, the Attorney General's Department, the Public Prosecutors under the Ministry of the Interior and the criminal courts of first instance (Criminal Court, Borispah Courts, Monthon Courts, ~~Mudak Courts~~).

3)- ~~When being in~~ <sup>after obtaining</sup> possession of such documents and information, I would ask the Ministry permission ~~to go and~~ <sup>to attend</sup> for some days ~~to~~ criminal proceedings in the ~~Penal~~ <sup>criminal</sup> Courts in Bangkok and also in some remote Courts outside Bangkok, say one Court under the Ministry of Justice and one Court under the Mahathai Department. Such an experiment I consider necessary, as criminal procedure must be practical and suited to the wants of the country as well as to the abilities of the administrative and judicial staff. The theoretical part, which is extremely important in the Penal Code, is of much less importance in the Code of Criminal Procedure.

4)- After such enquiries ~~being~~ <sup>are</sup> completed, I might draw up a preliminary text to be submitted to a drafting Commission. We would then follow about the same process as for the Criminal Code. But, as the question of procedure is more of a practical and technical character, and is more



connected with the internal management of the Ministry of Justice, a more important part should be given to the administrative representatives of such Ministry in the work of the drafting and revising Commissions.

Whilst the Code of Criminal Procedure is being prepared, I would suggest that the preliminary work be also started in connection with the Code of Obligations and Contracts, so that the Civil matters might be taken along with the Criminal Procedure.

Before undertaking to write out even a mere preliminary draft of Code of Obligations or any other part of the Civil Code, it is absolutely necessary to make abstracts or summaries of the various siamese laws/dealing with Civil matters, and of the rulings of the Dika.

Such abstracts must be made in the shape of articles of Code, summarizing each either a section of law or a ruling of the Dika. They would be distributed under the heading of one of the simplest Codes now in use, say the Swiss Code of Obligations or the Japanese Civil Code. They will be invaluable for the compilation of the draft, as ~~for~~ any matter to be examined by the Legislative Adviser ~~before being~~ embodied in the draft Code, they will give a full statement of the Siamese law or practice.

This preliminary work cannot be made except by a person having received a special training under the Code system. The services of a secretary ought to be engaged for that purpose. Such man must be a graduate of the best Law School and be thoroughly acquainted with any matters connected with Codification.

The preliminary work may last about one year. If the proper man for doing it could join the service in another three or four months, the abstract could be completed about the middle of the year 1908.

My intention is to ~~ask~~ the Government to grant me leave in March or April 1908. At that ~~moment~~ <sup>time</sup> the preliminary draft of the Code of Criminal Procedure will be ready. For the completion of such work as well as for the compilation of the other drafts, an assistant Legislative Adviser will be necessary. One single man, whatever his zeal might be, cannot carry out alone such considerable work as a general codification entails. Large and comprehensive laws are to be looked at by several competent persons. One points out the defects which the other one might overlook. Besides, to undertake it alone would exceed the time which one may expect to be able to stay in a tropical country like Siam. For these reasons, and after the experiment I have made with the Penal Code, I would not dare to undertake the Codification of the Civil and Commercial law of Siam without the assistance of some able persons. One assistant and one secretary are the minimum staff one may require for such an important work as contemplated by the Siamese Government. Similar work in other countries has been carried out by commissions including a large number of trained lawyers and ~~an~~ officials having the practice of the Code system. I don't think that a general codification was ~~was~~ ever commenced with such a small staff as the one I propose to appoint.

However, the services of the assistant are not required just now; the preliminary work the Code of obligations will be carried out by

the Secretary, as explained beforehand, and I myself will prepare the Code of Criminal Procedure. I could therefore, - if the Government agrees on the principle, - select the assistant on my next leave only. .

Assuming that the abstracts concerning the Code of Obligations be ready by the middle of 1908, the shortest process I would recommend to the Government for the preparation of a preliminary draft is to make the frame-work of it in Europe. For doing such a work quickly and safely, one must have at hand all possible means of information, either books or opinions of competent lawyers. In a place like Paris, the Legislative Adviser and his assistant would be able to decide on the general distribution of a Code on obligations and to frame out the most important provisions of it in less than half the time it will take in Bangkok. Being based on the abstracts compiled in Siam it will embody the Siamese practice as well as the best results of modern jurisprudence. When coming back to Bangkok, we might in a rather short time put it in the form of a draft Code to be submitted to a commission of Siamese lawyers and advisers, and afterwards revised by a higher Commission, just in the same way as was so successfully done with the Penal Code.

As to the further progress of Codification, that is to say drawing of the Code of Civil Procedure and of the Code on persons and property, I am not yet prepared to submit to the Government any definite scheme. The matter is a too distant one, and the course to be adopted might depend upon the success of the Code of Obligations.

There is only one point more which I



should like to submit to the Government.

The official text of the several Codes will be the siamese text. But it seems ~~absolutely~~ necessary that ~~some~~ text be published also in some european language. ~~It is principally in view of the fact that sooner or later, all foreigners will be submitted to the Siamese jurisdiction. It is only fair that a text of the laws they will be subject to should be put at their disposal in a language they are acquainted with. Besides, it is in the interest of the Government that the Siamese law, which is to apply to many contracts in which the Europeans are concerned, be known to these Europeans.~~

I would then propose that a text <sup>of each Code</sup> be published in both English and French. The English text will be the most useful for practical purposes, as English is the most commonly spoken language by the foreign community here. The French text ~~will~~ be useful for making the work of codification known outside Siam, as France is a place where the science of comparative Jurisprudence and Codification is most favoured. ~~A French translation of the Code will enable us to the French translation shall take place~~ Almost all Codes enacted all over the world have been published and commented upon in France. To publish ~~them~~ our Codes in French would be the best way of advertising ourselves and making known the progress ~~of them~~ realized by the Siamese Government in the matter of Codification.

Ministry of Justice.

17th. April 1907.

MEMORANDUM.

In consequence of the provisions made in the last treaty passed between Siam and France, I understand that the Siamese Government would like to have the work of Codification completed as soon as possible, as the giving up of the whole jurisdiction over French ressortissants is now subject to the publication of the several Codes.

I therefore venture to submit to the Ministry of Justice a general scheme for the completion of such work.

The Penal Code may be considered as finished, in so far as least as the Legislative Adviser is concerned. The English draft has been revised and highly improved by the Committee appointed for that purpose under the Presidency of His Royal Highness Prince Damrong. The revised text is being printed. I expect it will be ready in another week or two. The Special Commission entrusted with the writing of the Siamese text will then be able to start work.

Besides the Penal Code, a general Codification must include:-

A Code of Criminal Procedure,

A Civil and Commercial Code,

A Code of Civil Procedure (including procedure in commercial cases)

---

A Law of Organization of Courts.

The first work to be taken up now is undoubtedly the Code of Criminal Procedure, which forms the complement and continuation of the Penal Code.

Criminal Procedure is at present governed in Siam by the "Transitory Criminal Procedure Code" enacted in the year 1896. This act is a short abstract in 40 sections giving merely

general statements of law. Its form is so concise that it could not be used as a frame work for the compilation of a new Criminal Procedure Code. It would be impossible to classify the various and numerous rules of the present practice under its 40 sections. But, it gives a very clear indication of the general principles on which the Criminal Procedure is now based, and will be of great help in that respect.

With regard to that part of the Criminal Procedure which concerns evidence, the "Law on Evidence" of the year 1895 is a much more comprehensive document, which requires only some amendments or alterations. The matter of Evidence is of course to be embodied in the Criminal Procedure Code.

The matter of a Code of Criminal Procedure is more considerable perhaps than the matter of a Penal Code. The French Penal Code number 484 sections. The French Code of Criminal Procedure numbers 643 sections. In Germany, the figures are respectively 370 sections for the Penal Code and 506 sections for the Code of Criminal Procedure. In Japan, there are 430 sections in the Penal Code at present in force, and 480 sections in the Code of Criminal Procedure. The Indian Penal Code has 511 sections, the Indian Criminal Procedure Code has 565 sections. In Egypt only, owing to the very simple system of procedure now in force the Criminal Procedure Code numbers less sections than the Penal Code (282 sections against 341).

The revised draft of the Siamese Penal Code contains 338 sections. ~~It is probable that the Code of Criminal Procedure~~ will include from 350 to 400 sections.

Under the title of "Civil Code" or of "Civil and Commercial Code" a very large piece of work is meant. Shortly speaking, such Code is to include:-

1. The law relating to persons,
2. The law relating to property, moveable and immoveable,

(3)

2. The law relating to obligations and contracts.

**LAW RELATING TO PERSONS.**— The law relating to persons deals with

- a) — Capacity of persons, either natural persons or legal persons or bodies incorporated by law;
- b) — nationality, domicile, absence;
- c) — marriage, its forms and effects;
- d) — property of husband and wife, either personal property or joint property; administration of such properties;
- e) — cancellation or dissolution of marriage; divorce;
- f) — consequences of dissolution of marriage, settlement of accounts, division of property;
- g) — children, legitimate and illegitimate, adoption, rights of parents over their children, guardianship;
- h) — inheritance and gifts.

**LAW RELATING TO PROPERTY.**— The law relating to property deals with

- a) — immoveable property, its constitution, title deeds, real rights, servitudes, possession, mortgage;
- b) — moveable property, possession, pledge.

**LAW RELATING TO OBLIGATIONS.**— The law relating to obligations and contracts includes:—

~~a) — definition of obligations and contracts, formation of obligations and contracts, effects of such obligations and contracts, termination of same;~~

b) — rules of specific contracts such as sale, sale on trust, exchange, loan, hiring, agency, deposit, suretyship, associations, negotiable instruments, etc.

Several other important matters like insolvency and bankruptcy, privileges, prescription, maritime commerce,



(4)

insurance, average, etc. are also to be incorporated in the Civil Code and may be ascribed to either the second or the third part. It depends upon what distribution of chapters may be adopted by the Siamese Government and principally upon the distinction or non-distinction of civil and commercial matters.

A Code dealing with the several above-mentioned questions shall constitute a volume of several thousand sections. In France, the Civil Code numbers 2781 sections, the Commercial Code 648 sections, total 3429 sections. In Germany, the Civil Code is 2885 sections long, the Commercial Code 906 sections, total 3791 sections. In Egypt a short summary of Civil and Commercial matters extends over 1478 sections. In Japan, the new Civil Code has 1147 sections, the Commercial Code 1064 sections, total 2211 sections. I cannot venture of course to put in any figure for Siam, even an approximate one, but I am inclined to think that the work will not be complete in less than 3000 sections.

The compilation of a Civil and Commercial Code of over 3000 sections would be a too considerable task to take it in hand just at one time. It would be easier to take it part by part, thus following a process which has been very successful in Switzerland. The law on obligations and contracts would come first. Then the law on property and afterwards the law on persons and family. It is not of course the logical order of a Civil Code, where persons and property ought to be defined and described before obligations, as obligations are the legal connections between persons and property. But it is going from the less difficult part to the more difficult. Law concerning persons and property is very peculiar in Siam if compared with the Western countries where model Codes may be selected. On the contrary, the law on obligations is more uniform all over the world. It is therefore the easiest part to frame. After all, if we are



(5)

to include in it bankruptcy, negotiable instruments and matters in connection with the maritime trade, it will constitute more than half the whole Civil Code.

Nothing has been done up to now in the way of codifying the Siamese law on obligations and contracts, except a draft act in 173 sections concerning commercial partnerships<sup>and</sup> companies.

The codification of Civil Procedure is at present most advanced. His Royal Highness Prince Rabi has completed last year a consolidation of the various acts and regulations dealing with Civil Procedure. A draft act has been so prepared, numbering 149 sections and including all the rules actually followed in the Siamese Civil Courts.

A consolidation of the law of Organisation of the Courts in 37 articles has been compiled at the same time.

Both these documents might be promulgated now as they stand, and shall constitute a considerable improvement in the way of clearness and consistency of rules of Procedure. But it is probable that after the Penal Code, the Code of Criminal Procedure and the Civil Code have been promulgated, a readjustment of the Rules of Civil Procedure will become necessary. What alterations will be required largely depends upon the course the Siamese Government shall take regarding several matters which shall be submitted for its consideration during the compilation of the Code of Criminal Procedure and of the Civil

Code. Any-way, I presume that with a rather little work they might be transformed in a Code of Civil Procedure and a Law of Organisation of Courts as provided in the Franco-Siamese Treaty.

The foregoing indications show that the Penal Code constitutes only a very small part of the general codification. However, when enacted, it will have taken about 3 years to pass it through; and it must be borne in mind that before the Legislative

(6)

Adviser took charge of it, a considerable work had already been done in the shape of the draft initiated by a former Commission, taken up conjointly by Dr. Masao and Mr. Schlessner, and completed by Mr. Schlessner. Should we go through the same process for the further Codification, I would not warrant that the Codes will be finished in another 20 years. Taking three years as a minimum for the Penal Code, which includes 238 sections, a complete codification in 4000 sections at least would last 10 times more. The slightest drawback of such a lengthy process would be that the work shall have to pass through several hands and will lack harmony.

Under the actual circumstances, the process I would recommend to the Government is the following:-

As aforesaid, the first matter to be taken up after the Penal Code is the Code of Criminal Procedure.

For the preparation of such Code the following work could be started immediately:

1) - A full translation of all regulations, directions, instructions etc. issued either by the Ministry of Justice or by the Ministry of Interior in connection with the criminal procedure.

2) - A full statement in writing of the practice actually followed in criminal cases by the <sup>Police</sup> ~~Police~~, the Gendarmerie, the ~~Attorney General's Department~~, the Public Prosecutors under the Ministry of <sup>The</sup> Interior and the criminal courts of first instance (Criminal Court, Borispah Courts, Monthon Courts, Luang Courts).

3) - After obtaining possession of such documents and information, I would ask the Ministry permission to attend for some days criminal proceedings in the Criminal Courts in Bangkok and also in some remote Courts outside Bangkok, say one Court under the Ministry of Justice and one Court under the Mahathai

Department. Such an experiment I consider necessary, as criminal procedure must be practical and suited to the wants of the country as well as to the abilities of the administrative and judicial staff. The theoretical part, which is extremely important in the Penal Code, is of much less importance in the Code of Criminal Procedure.

4) - After such enquiries are completed, I might draw up a preliminary <sup>draft</sup> ~~tax~~ to be submitted to a drafting Commission. We would then follow about the same process as for the Criminal Code. But, as the question of procedure is more of a practical and technical character, and is more connected with the internal management of the Ministry of Justice, a more important part should be given to the administrative representatives of such Ministry in the work of the drafting and revising Commissions.

Whilst the Code of Criminal Procedure is being prepared, I would suggest that the preliminary work be also started in connection with the Code of Obligations and Contracts, so that the Civil matters might be taken along with the Criminal Procedure.

Before undertaking to write out even a mere preliminary draft of Code of Obligations or any other <sup>part</sup> of the Civil Code, it is absolutely necessary to make abstracts or summaries of the various Siamese laws and of the rulings of the Dika dealing with Civil matters.

Such abstracts must be made in the <sup>shape</sup> ~~same~~ of articles of Code, each summarising either a section of law or a ruling of the Dika. They would be distributed under the heading of one of the simplest Codes now in use, say the Swiss Code of Obligations or <sup>the</sup> Japanese Civil Code. They will be invaluable for the compilation of the draft, as they will give a full statement of the Siamese law or practice on any matter to be examined by the Legislative Adviser and embodied in the draft Code.

This preliminary work cannot be made except by a person



having received special training under the Code system. The services of a secretary ought to be engaged for that purpose. Such man must be a graduate of the best Law School and be thoroughly acquainted with any matters connected with Codification.

The preliminary work may last about one year. If the proper man for doing it could join the service in another three or four months, the abstracts could be completed about the middle of the year 1908.

My intention is to ask the Government to grant me a leave in March or April 1908. At that time the preliminary draft of the Code of Criminal Procedure will be ready. For the completion of such work as well as for the compilation of the other drafts, an assistant Legislative Adviser will be necessary. One single man, whatever his zeal might be, cannot carry out alone such considerable work as general codification entails. Large and comprehensive laws are to be looked at by several competent persons. One points out the defects which the other one might over-look. Besides, to understand it alone would exceed the time which one may expect to be able to stay in a tropical country like Siam. For these reasons, and after the experiment I have made with the Penal Code, I would not dare to undertake the Codification of the Civil and Commercial law of Siam without the assistance of some able persons. One assistant and one secretary are the minimum staff one may require for such an important work as contemplated by the Siamese Government. Similar work in other countries has been carried out by commissions including a large number of trained lawyers and officials having the practice of the Code system. I don't think that a general codification was ever commenced with such a small staff as the one I proposed to appoint.

However, the services of the assistant are not required just now; the preliminary work for the Code of obligations will

be carried out by the Secretary, as explained beforehand, and I myself will prepare the Code of Criminal Procedure. I could therefore, - if the Government agrees on the principle, - select the assistant on my next leave only.

Assuming that the abstracts concerning the Code of Obligations be ready by the middle of 1908, the shortest process I would recommend to the Government for the preparation of a preliminary draft is to make the framework of it in Europe. For doing such a work quickly and safely, one must have at hand all possible means of information, either books or opinions of competent lawyers. In a place like Paris, the Legislative Adviser and his assistant would be able to decide on the general distribution of a Code on Obligations and to frame out the most important provisions of it in less than half the time it will take in Bangkok. Being based on the abstracts compiled in Siam it will embody the Siamese practice as well as the best results of <sup>modern</sup> jurisprudence. When coming back to Bangkok, we might in a rather short time put <sup>it</sup> in the form of a draft Code to be submitted to a commission of Siamese lawyers and advisers, and afterwards revised by a higher Commission, just in the same way as was so successful with the Penal Code.

As to the further progress of Codification, that is to say drawing of the Code of Civil Procedure and of the Code on persons and property, I am not yet prepared to submit to the Government any definite scheme. The matter is a too distant one, and the course to be adopted might depend upon the success of the proceedings followed for the Code of Obligations.

There is only one point more point which I should like to submit to the Government.

The official text of the several Codes will be the Siamese text. But it seems necessary that a text be published also in some European language. Sooner or later, all foreigners will

be submitted to the Siamese jurisdiction. It is only fair that a text of the laws they will be subject to should be put at their disposal in a language they are acquainted with. Besides, it is in the interest of the Government that the Siamese law, which is to apply to many contracts in which Europeans are concerned, be easily known by these Europeans.

I would then propose that a text of each Code be published in both English and French. The English text will be the most useful for practical purposes, as English is the language most commonly spoken by the foreign community here. The French <sup>and</sup> will be useful for making the work of Codification known outside Siam, as France is a place where the science of comparative Jurisprudence and Codification is most favoured. Almost all Codes enacted all over the world have been published and commented upon in France. To publish our Codes in French would be the best way of advertising ourselves and making known the Progress realized by the Siamese Government in the matter of Codification.

*not sent*  
*1882*

Ministry of Justice.

10 April 1907.

Mr. Padoux, legislative Adviser,

to

H. R. H. Prince Damrong, Minister of the Interior.

I have just submitted to the Under Secretary of the Ministry of Justice a Memorandum concerning the further Codification of the Siamese Laws. As Your Highness always displayed a keen interest in the matter, I take the liberty of forwarding to him a copy of such memorandum, hoping that Your Highness will approve of the suggestions which I am submitting to the Government.

I think of leaving Bangkok on the 17th inst for a health trip to Java. Should Y. R. H. like to have any verbal explanation about the memorandum, I am always at Y. H. disposal.

The printing of the revised text of the draft Penal Code is progressing.



Ministry of Justice.

10 April 1907.

Dear Mr. Strobel,

I beg to forward you a copy of the memorandum which I have submitted to the Under Secretary of the Ministry of Justice concerning the further progress of Codification.

There is nothing urgent in the matter, except what concerns the appointment of a secretary for the preliminary work in connection with the Code of Obligations. If the Siamese Government are anxious of pressing the matter of Codification, the sooner the man be appointed, the better. Now, I think leaving for Java on the 17th. inst. If something could be decided before my departure, I might immediately wire to the man I have in mind, and he could be here say in July or August. If the matter is delayed up to my coming back from Java, it probably means three months delay more. But I would like to point that personally I do not press. I leave it entirely with the Siamese Government either to decide on the question or to postpone it. I only want them to note that any delay will exert influence on the future progress of the work.

Sincerely yours,





กระทรวงมหาดไทย

วันที่ 11th เดือน April 907  
ร.ศ.

Dear Mr Pajdoux.

I have received your letter  
of yesterday's date enclosing  
Memorandum of the proposed new  
Siamese Civil Law, & Criminal  
Procedure, for my information, for  
which I beg you to please accept  
my best thanks.

I have read your Memorandum  
very carefully and personally.

I quite agree with your proposal.

I remain, Dear Mr Pardaux,

Yours Sincerely.

*Danrong.*

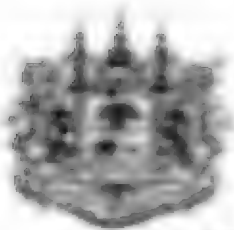
April 3 1907



Dear Mr. Palenx:-

I enclose  
you a letter from Anna  
Li. I should like very  
much to see you again  
about the matter. If convenient  
for you, the afternoon is the  
best time to see me.

I remain yours  
Edward H. Hobbs



Ministry of the Interior.

Bangkok, April 12th, 1907.

Dear Mr. Strobel,

I have shown to H.R.H. Prince Damrong Monsieur Padoux's letter concerning the suggestion for the appointment of a Secretary for the Preliminary work in connection with the Code of Obligations and conveyed to him your message.

His Royal Highness fully approves of such appointment and he thinks the sooner we can get that Secretary the better, and he would support it when it comes up before the Council of Regency for the necessary sanction. His Royal Highness advises that Monsieur Padoux should see the Under Secretary  
for

the Ministry of Justice and ask him to send a letter  
up to the Council of Regency for sanction.

Yours sincerely,

*Phya Sri Sabu Khin*

. Minister

to send a letter

Dear Mr. Stöbel,

tion.

I mentioned to day  
of the Ministry of Justice the ques-  
tion of a sub-assistant for the Council

He said that he would  
before the Council either to-night

Sincerely yours

*Schindler*

Ministry of Justice.

18th. April 1907.

Dear Mr. Strobel,

I mentioned to day to the Under-Secretary of the Ministry of Justice the question of the appointment of a sub-assistant for the Codification.

He said that he would bring the matter before the Council either to-night or Thursday night.

Sincerely yours,

Notes on the Division of the proposed code on Obligations

In the memorandum which I submitted to the Minister of Justice on April 11th 1907, I referred to the civil codification by advising the Government to take up first the matter of obligations and contracts, and leave out for a further codification the rules concerning persons. My object was to follow the same Process which has been extremely successful in Switzerland by going from the less difficult part to the most difficult.

The Government has approved of my views and engaged the services of Mr. L. Evesque to act as a Secretary for the Commission of Codification and start the work of the civil code.

Mr. L. Evesque having arrived in Bangkok on the 4th September, I consulted with him on the division to be adopted for the Code of obligations. We agreed on the following points:

The matters which the civil Law deals with, are to be divided into two parts: rules concerning the persons and rules concerning the property. The rules concerning the persons refer to the condition of persons, organization of family and inheritance; the rules concerning the property refer to the legal connections between persons at properties.

In a country whatsoever, the former part is most important as it is connected with the social life of the inhabitants. But, as the matter is generally ruled by old laws and practice, which are well known by any one, it does not require an immediate codification.

On the contrary, the business transactions and commercial intercourse result in numerous contracts, the validity and consequences of which may give raise to any amount of discussion



discussion and must therefore be clearly ascertained in the best interest of the public order and economical growth of the country. Law concerning persons and real property is very peculiar in Siam if compared with the Western countries where model-codes may be selected whilst law on obligations is more uniform all over the world. It is therefore the easiest part to frame. Moreover including in it the rules on commercial matters will constitute more than half of the future Civil Code. This is why it is advisable that the part of the Civil Code dealing with obligations and contracts be prepared first.

An obligation is a bond creating a right, the object of which is to procure an advantage for a person (called the creditor) by obliging the person bound (called the debtor) to do a definite act or to abstain from it.

The following would be a convenient division for a Code obligations.

A first part would deal with the different causes from which an obligation may arise.

A second part would define the specific circumstances by which the ordinary forms of an obligation are modified: for instance several liability.

When an obligation exists, it has effects either for the parties, or for third persons; hence a third part dealing with the effects of obligations.

As an obligation may be transferred, there must be a fourth part dealing with the assignment of obligations.

How an obligation comes to an end would be the subject matter of a fifth part under the heading of extinction of obligations. This would include the performance of the obligations and the consequences of their non performance.

A sixth part shall contain the rules concerning the several ways of proving the existence or extinction of

obligation

obligation, that is to say law on civil evidence.

The preceding parts include the essentials of the matter of obligations; however, a law on obligations would not be complete, if it did not include <sup>as a separate part</sup> the rules concerning the different kinds of sureties by which the execution of the obligations may be guaranteed.

An eighth part shall contain the particular rules of specific contracts such as sale, sale on trust, exchange, loan, hiring, deposit, associations, &c.

#### Part 1. Causes of Obligations.

Obligations arise out of four kinds of causes: contracts, conduct of parties, wrongful acts, law.

##### Section 1. Contracts.

Contracts are the most important, the most frequent cause of obligations; they must comply with certain conditions of existence and validity.

Conditions of existence are conditions failing with which a contract is null and void, such as a contract without an object.

Conditions of validity are conditions failing which a contract is only voidable. A voidable contract may become valid by subsequent ratification; for instance when the law requires that certain contracts be registered, so long as they are not registered, they may be cancelled as irregular, but when registered, they become valid.

<sup>are</sup> There are three conditions for existence of contracts:

1. Agreement, i.e. expression of one's offer and another's acceptance; from this standpoint we have to define the rules governing the expression of intention and to deal with the questions arising out of the authority and responsibility of attorneys and other agents.

2. Object: There is no contract without an object. It is to be provided what kinds of properties or deeds may

become

become objects of obligations; for instance the functions of a public servant are not a matter of trade; a government official can not dispose of his appointment.

28. Consideration: There is no contract without a consideration, or, if there is one, when the consideration is false or illegal, such as a consideration contrary to the public morals or order.

There are four conditions for validity of contract:

18. That one's consent be not defective, viz. there be no mistake, no fraud or wrongful compulsion.

29. That the parties to the agreement be capable of incurring obligations, for instance that a party be not under age or lunatic.

30. That there be not gross injury done to one of the parties, for instance, in matter of debt, that interest be not more than capital.

In such a case the debtor is allowed an action for annulment of the obligation.

40. That the formalities required by law be complied with.

#### Section 2-Conduct of parties.

Sometimes obligations arise from a legal deed without a proper agreement; for instance, when a person who is not a debtor performs an obligation by mistake or otherwise, the creditor must refund that person to the extent to which he (the creditor) received advantage thereby.

#### Section 3.-Wrongful Acts.

Obligations often arise out of illegal acts committed, intentionally or by negligence. In this section we will define what is a wrongful act, who is responsible for it and what compensation is to be granted.— The provisions in the new Penal Code will be of great help, for that purpose. There will be also rules defining to what extent one may be liable for his own deeds, for another's deeds (for instance

for his children's deeds) and even for accidents caused by his own properties (vide English Employer's liability act. — Workmen's compensation acts and French work's accidents acts.)

#### Section 4. Law

Section 4 will deal with obligations created by implication of law. They are generally provided for the sake of public order, such as the husband being obliged to support his wife and children.



**ต้นฉบับไม่มีหน้านี้**

**NO THIS PAGE IN ORIGINAL**

Some sections will contain rules concerning specific assignments of obligations, viz when a third person (at the request of either the creditor, or the debtor) <sup>acquires</sup> gets the rights of the creditor towards the debtor by paying the debt to the creditor.

For an illustration is the case of the transfer of a promissory note or of a sure bond by endorsement.



This part is to deal with the form and conditions of assignment of an obligation and its effects between the parties as well as towards third persons.

Some sections will contain rules concerning subrogation and delegation which are specific assignments of obligations.

### Part 5. Extinction of Obligations.

Section 1. Performance of Obligations.- That is the most frequent and ordinary way for extinction of obligations; we shall define the rules showing what is to be delivered by the debtor: where and when the debtor is obliged to perform his obligation. With regard to the last point, we shall define the periods of times i.e. how a period is to be computed when it is measured in hours, days, weeks, months, or years.

Section 2. shall deal with the very important matter of non-performance of obligations; when an obligation is not performed, there must be, instead of the exact performance, either cancellation of the contract or a fair and equivalent compensation, generally awarded in money. In this section will be included rules as to different ways of assessing the amount of a compensation.

In section 3. the other ways of the extinguishing obligations, such as novation, release, set off, cancellation, prescription, etc shall be specifically described.

### Part 6. Proofs of existence or extinction of obligations.

There are to be divided into four kinds.

1. Documentary evidence: the documentary evidence has more or less weight when the act was passed before official or witnesses or when it was passed without witnesses.
2. Oral evidence, for which the Siamese law on evidence

will of much help.

39. Presumptions or proofs derived from circumstances.

40. Proofs resulting from the admission or oath of one of the parties.

A special section might include practical rules as to how construing rightly the clauses of contracts. Specific provisions shall also be made for cases where the ~~same~~ parties having not the same nationality, <sup>or</sup> residing outside Siam, there may be some doubt as to under which law they intended to contract.

*Capitulum*

#### Part 7. Sureties.

Sureties are of two kinds: some are constituted by a person undertaking to perform an obligation in lieu of the debtor, if the debtor does not perform it himself; they are called personal sureties.

The others, called real sureties, are constituted by the giving of an exclusive right over properties, such right to be exercised by the creditor, in case of non performance of the obligation. Pledge and Mortgage are real sureties.

I presume that personal sureties and preferential rights on moveables, properties, will only be included in the code of obligations; the preferential rights on immoveable properties I would rather leave for the next part of the Civil Code, where questions connected with tenure of land shall be dealt with.

*Capitulum*

#### Part 8. Rules of specific contracts.

This last part shall contain the rules governing the most important contracts such as sale, sale on trust, exchange, gift, loans for consumptions or use, hiring of properties or services, associations (including civil or commercial societies for which a draft act has already been prepared) Agency, Deposit, Business management, Unjust Enrichment.

Exchange bills, promissory notes, cheques and other negotiable instruments, etc.

*(L. J. B. B. B.)*

The abstracts of siamese law and Dika rulings which Mr. J. J. B. B. is to compile shall be classified under the above headings. so, when taking up later ~~and~~ the work of the code of Obligations, we ~~just~~ shall be able to find out for each specific point of law what is the siamese law and practice.

I intend the report every month to the Minister of Justice how the work is progressing.

Ministry of Justice,

28 September 1907.

Notes on the Division of the proposed Code  
on Obligations.

---

In the memorandum which I submitted to the Minister of Justice on April 11th 1907, I referred to the Civil Codification by advising the Government to take up first the matter of obligations and contracts, and leave out for a further codification the rules concerning persons. My object was to follow the same process which has been extremely successful in Switzerland by going from the less difficult part to the most difficult.

The Government has approved of my views and engaged the services of Mr. L. Evesque to act as a Secretary for the Commission of Codification and start the work of the Civil Code.

Mr. L. Evesque having arrived in Bangkok on the 4th September, I consulted with him on the division to be adopted for the Code of obligations. We agreed on the following points:

The matters which the Civil Law deals with, are to be divided into two parts: rules concerning the persons and rules concerning the property. The rules concerning the persons refer to the condition of persons, organization of family and inheritance; the rules concerning the property refer to the legal connections between persons at properties.

In a country whatsoever, the former part is most important as it is connected with the  
social



social life of the inhabitants. But, as the matter is generally ruled by old laws and practices, which are well known by any one, it does not require an immediate codification.

On the contrary, the business transactions and commercial intercourse result in numerous contracts, the validity and consequences of which may give rise to any amount of discussion and must therefore be clearly ascertained in the best interest of the public order and economical growth of the country. Law concerning persons and real property is very peculiar in Siam if compared with the western countries where model-codes may be selected, whilst law on obligations is more uniform all over the world. It is therefore the easiest part to frame. Moreover including in it the rules on commercial matters will constitute more than half of the future Civil Code. This is why it is advisable that the part of the Civil Code dealing with obligations and contracts be prepared first.

An obligation is a bond creating a right, the object of which is to procure an advantage for a person (called the creditor) by obliging the person bound (called the debtor) to do a definite act or to abstain from it.

The following would be a convenient division for a Code on obligations.

A First Part would deal with the different causes from which an obligation may arise.

A second part would define the specific circumstances by which the ordinary forms of an obligation are modified: for instance several liability.

When an obligation exists, it has effects either for the parties, or for third persons; hence a third part dealing with the effects of obligations.

As an obligation may be transferred, there must be a fourth part dealing with the assignment of obligations.

How an obligation comes to an end would be the subject matter of a fifth part under the heading of extinction of obligations. This would include the performance of the obligations and the consequences of their non performance.

A sixth part shall contain the rules concerning the several ways of proving the existence or extinction of obligation, that is to say law on civil evidence!

The preceding parts include the essentials of the matter of obligations; however, a Law on obligations would not be complete, if it did not include as an seventh part the rules concerning the different kinds of sureties by which the execution of the obligations may be guaranteed.

An eighth part shall contain the particular rules of specific contracts such as sale, sale on trust, exchange, loan, hiring, deposit, associations, &c.

## PART 1.-CAUSES OF OBLIGATIONS.

Obligations arise out of four kinds of causes: contracts, conduct of parties, wrongful acts, law.

### Section 1.-Contracts.

Contract are the most important, the most frequent cause of obligations; they must comply with certain conditions of existence and validity.

Conditions of existence are conditions failing which a contract is null and void, such as a contract without an object.

Conditions of validity are conditions failing which a contract is only voidable. A voidable contract may become valid by subsequent ratification; for instance when the law requires that certain contracts be registered, so long as they are not registered, they may be cancelled as irregular, but when registered, they become valid.

There are three conditions for existence of contracts;

(1) Agreement, i.e. expression of one's offer and another's acceptance; from this standpoint we have to define the rules governing the expression of intention and to deal with the questions arising out of the authority and responsibility of attorneys and other agents.

(2) Object: There is no contract without an object. It is to be provided what kinds of properties or deeds may become objects of obligations; for instance the functions of a public servant are not a matter of trade;

45

a government official can not dispose of his appointment.

(3) consideration: There is no contract without a consideration, or, if there is one, when the consideration is false or illegal, such as a consideration contrary to the public morals or order.

There are four conditions for validity of contract:

(1) That one's consent be not defective, viz. there be no mistake, no fraud or wrongful compulsion.

(2) That the parties to the agreement be capable of incurring obligations, for instance that a party be not under age or lunatic.

(3) That there be not gross injury done to one of the parties, for instance, in matter of debt, that interest be not more than capital.

In such a case the debtor is allowed an action for annulment of the obligation.

(4) That the formalities required by law be complied with.

#### Section 2.-Conduct of parties.

Sometimes obligations arise from a legal deed without a proper agreement; for instance, when a person who is not a debtor performs an obligation by mistake or otherwise, the creditor must refund that person to the extent to which he (the creditor) received advantage thereby.

#### Section 3.-Wrongful acts.

Obligations often arise out of illegal acts committed, intentionally or by negligence.

In



In this section we will define what is a wrongful act, who is responsible for it and what compensation is to be granted.- The provisions in the new Penal Code will be of great help, for that purpose -- There will be also rules defining to what extent one may be liable for his own deeds, for another's deeds (for instance for his children's deeds) and even for accidents caused by his own properties (vide English "Employer's Liability act" -- "Arbeidsskeringsloven" and French "work's accidents acts")

#### Section 4.-Law

Section 4 will deal with obligations created by implication of law. They are generally provided for the sake of public order, such as the husband being obliged to support his wife and children.

#### PART 2.-SPECIFIC FORMS OF OBLIGATIONS.

The conditions in part 1. are substantial to every obligation; those in Part 2 occur only in some particular cases. They are to be divided under four different headings.

(1) conditions precedent or subsequent, and conditions as to time of performance of the obligation. Those conditions refer to future event, the happening of which effects the existence, execution or extinction of the obligations. For instance an agreement for delivery of goods may be subject to a condition subsequent, such as the delivery by a specified ship, landing before a fixed date; if the vessel

vessel does not arrive at the time due, the contract falls to the ground.

2). **Optional Obligations.**— The debtor of an optional obligation has the option to perform his obligation one way or the other for instance by paying a certain sum of money instead of delivering a certain property.

3). **Joint and Several Obligations, i.e.** obligations where the creditor may at his discretion ask for performance from any one of the debtors.

4). **Divisible and non divisible obligation**  
Divisible obligations are those obligations which may be performed successively or by instalments. A non divisible obligation is an obligation which, either by agreement or on account of the nature of the property, must be performed at one time: for instance in the case of sale of a pony the price may be paid by instalments but the obligation of delivering the animal cannot be divided.

### **PART 3.—EFFECTS OF OBLIGATION.**

---

In this part, we must provide rules: for the effects of the obligation between parties and the effects towards third persons who were not parties to such obligations.

### **PART 4. ASSIGNMENT OF OBLIGATIONS.**

---

This part is to deal with the form and conditions of assignment of an obligation and its effects between the parties as well as towards third persons.

Some sections will contain rules concerning specific assignments of obligations, viz when a third person (at the request of either the creditor, or the debtor) acquires the right of the creditor towards the debtor by paying the debt to the creditor.

An illustration is the case of the transfer of a promissory note or of a slave bond by endorsement.

### PART B.-EXTINCTION OF OBLIGATIONS.

Section 1. Performance of Obligations:- That is the most frequent and ordinary way for extinction of obligations; we shall define the rules showing what is to be delivered by the debtor; where and when the debtor is obliged to perform his obligation. With regard to the last point, we shall define the periods of times i.e. how a period is to be computed when it is measured in hours, days, weeks, months, or years.

Section 2. shall deal with the very important matter of non-performance of obligations; when an obligation is not performed, there must be, instead of the exact performance either cancellation of the contract or a fair and equivalent compensation, generally awarded in money. In this section will be included rules as to different ways of assessing the amount of a compensation.

In section 3. the other ways of extinguishing obligations, such as novation, release,

set off, cancellation, prescription, etc shall be specifically described.

#### **PART 6. PROOFS OF EXISTENCE OR EXTINCTION OF OBLIGATION.**

There are to be divided into four kinds.

(1) Documentary evidence: the documentary evidence has more or less weight when the act was passed before official or witnesses or when it was passed without witnesses.

(2) Oral evidence, for which the Siamese Law on evidence will be of much help.

(3) Presumptions or proof derived from circumstance.

(4) Proof resulting from the admission or oath of one of the parties.

A special section might include practical rules as to how construing rightly the clauses of contracts. Specific provisions shall also be made for cases when the parties having not the same nationality or residing outside Siam, there may be some doubt as to under which law they intended to contract.

#### **PART 7. SURETIES.**

Sureties are of two kinds: some are constituted by a person under-taking to perform an obligation in lieu of the debtor, if the debtor does not perform it himself; they are called personal sureties.

The others, called real sureties, are constituted by the giving of an exclusive right over property, such right to be exercised by the creditor, in case of non performance of

the



the obligation . Pledge and Mortgage are real sureties.

I presume that personal sureties and preferential rights on moveables, properties, will only be included in the Code of Obligations, the preferential rights on immoveable properties I would rather leave for the next part of the Civil Code, where questions connected with tenure of land shall be dealt with.

**PART 8. RULES OF SPECIFIC CONTRACTS.**

-----

This last part shall contain the rules governing the most important contracts such as sale, sale on trust, exchange, gift, loans for consumption or use, hiring of properties or services, associations (including civil or commercial societies for which a draft act has already been prepared) Agency, Deposit, Business management, Unjust , Bill, promissory notes, cheques and other negotiable instruments, &c.

The contracts of Siamese law and Dika rulings which Mr. L. Evogue is to compile shall be classified under the above headings. So, when taking up later on the work of the Code of Obligations, we shall be able to find out for each specific point of law what is the Siamese laws and practice.

I intend <sup>to</sup> report every month to the Minister of justice how the work is progressing.



กระทรวงมหาดไทย

วันที่ 17 เดือน October ค.ศ. 1907

G. Padoux, Esqre.

Legislative Adviser.

Sir,

I am instructed by H.R.H. Prince Damrong, to acknowledge the receipt of your letter dated the 30th Sept. sending to H.R.H. a copy of a memorandum on the Siamese Law, which you have drafted and submitted to the Ministry of Justice. H.R.H. has looked through the draft, and entirely agrees with the line of the codification you adopted, and

desires me thank you for  
sending it to him.

I have the honour,  
to be,

Yours Obediently.

Phra Montri

Private Secretary.

. . . . .

31st October 1902

## Memorandum.

Mr. Laddan, Legislative Advisor  
to  
H. R. H. Prince Rajendra Malla,  
Minister of Justice

Referring to my memorandum of the 21<sup>st</sup> September, I beg to report that ever since the following work has been done by Mr. L. Laddan in connection with the proposed Code on Obligations.

Revisal of the Law on Debt of the year 1238, the Law on Evidence, and the Transference Law.

Revisal of the civil judgments of the Dika Court as published from 112 to 123.

Revisal of the civil judgments of the Dika Court (not published) for the year 124.

Revisal of the <sup>civil</sup> judgments of the Court of Appeal as constituted by the Act of 1883

Altogether, about 4 or 500 judgments were summarized, and abstracts classified under the various headings mentioned in the last memorandum.

Luang Sakon Satyathana has given valuable assistance for the translation and perusal of the Siamese texts.



## Memorandum

Mr. Pascoe, Legislative Adviser,

to

H. H. Prince Rajbans, Director,

Ministry of Justice

~~Referring to my memorandum of the~~  
~~\_\_\_\_\_~~, I beg to report that the following  
 work has been done by Mr. X. Evens, in con-  
 during the month of November in connection with the proposed Code on Obligations:

Perusal of the "Mortgage Acts" of the  
 years 115 to 118.

Perusal of the Court Judgements of the  
 District Court as (not published) for the year  
 125 to half the year 126.

Altogether, about 200 judgements  
 were summarized and abstracts classified  
 under the various headings mentioned in  
 the memorandum of the 28<sup>th</sup> September.

~~During the month of November has given~~  
~~valuable assistance for translation and perusal~~  
~~of the Burmese texts.~~

Two interpreters ~~are now~~ have  
 been ~~now~~ busy in translating several  
 Burmese laws to be ~~perused~~ perused and  
 summarized during December.

1/54  
II December 1907.

MEMORANDUM.-

Mr. Pasoux, Legislative Adviser,

to

His Royal Highness Prince Rajaburi, Minister of Justice.

In the memorandum which I submitted to the Ministry of Justice on April 10th 1907, the following was said about the future of Codification of Civil Procedure:

"The codification of Civil Procedure is at present most advanced. His Royal Highness Prince Rajaburi has completed last year a consolidation of the various acts and regulations dealing with Civil Procedure. A draft act has been so prepared, numbering 148 sections and including all the rules actually followed in the Siamese Civil Courts.

"A consolidation of the law of organization of the Courts in 37 articles has been compiled at the same time.

"Both these documents might be promulgated now as they stand, and shall constitute a considerable improvement in the way of clearness and consistency of Rules of Procedure. But it is probable that after the Penal Code, the Code of Criminal Procedure, and the Civil Code have been promulgated, a readjustment of the Rules of civil procedure will become necessary. What alterations will be required largely

Ministry of Justice.

Jan. 8. 1908.

MEMORANDUM

1/55.1

Bangkok Times Press, Limited.

T. M.

BANGKOK

Dec. 29

1907.

Dear Mr. Padox

Will you be good enough to send me the names of the French members of the Staff of the Ministry of Justice - for insertion in the Alphabetical list of the Directors? I understand there is one here now, and others expected shortly, but your own name is the only one I have received.

Yours faithfully Alt. Maudie

Ministry of Justice.

Jan. 8. 1908.

Dear Mr. Mundie,

The new French member of the staff of the Ministry of Justice is Mr.

L'Evesque, C. Secretary to the Commission of Codification.

Three young men are expected to be here in March. Their names are

Laurent,

Laydeker,

Pradère-Niquet.

Truly yours,

January 31. 1913.

Memorandum

Mr. Radour, Legislative Adviser,

to

H.R.H. Prince Rajburi Dirakrit

Minister of Justice.

1. Beg to report that the following work has been done during the work of December, in connection with the proposed Code of Obligations:

I. Perusal of the following Siamese Laws:

1. Laksana Kothrong Tong Ti;
2. Laksana Bot Set;
3. Mining Act;
4. Law on Navigation;
5. Hackney Carriage Act;
6. Post Office Act;
7. Local Sanitation Decree;

II. Perusal of the following judgments:

1. Appeal Court's Final judgments (part of which being appeals against judgments of the Court of Foreign Causes).
2. International Appeals Court's judgments.
3. Dika's judgments (not published) for the second half of the year 123 the first and half of the year 122.

About 800 judgments were summarized and abstracts classified under the various headings mentioned in the memorandum of the 28th. September.

The Siamese Laws which we took or intend to take into consideration are:

I. Civil Laws:

1. Law on Debts or Laksana Koo Ni.



2. Law on Evidence.
3. Law on Limitation or Laksana Rap Pong.
4. Laksana Betnot.
5. Law on Slavery or Laksana Tat.
6. Law on Pawnbrokers.
7. Copyright Act,

## II. Administrative Laws:

1. Laksana Pokhrong Tong Ti.
2. Mining Act.
3. Law on Navigation.
4. Law on State Railways.
5. Hackney Carriage Act.
6. Post Office Act.
7. Local Sanitation Decree.

I would be glad to know if the Ministry of Justice knows of any other Laws than those above mentioned and those published in the two volumes compiled by H.R.H. Prince Rabbi, which might contain provisions dealing with civil matters or any matters connected with obligations, contracts and general principles of Laws.

1/58  
Ministry of Justice.

Jan. 6. 1908.

Dear Mr. Strobel,

I beg to enclose a copy of a draft memorandum which I have prepared for the Minister of Justice on the future of the codification, in connection with my leave and the engagement of some more assistants. Would you kindly go through it and see whether you have any objection to its contents or wording.

I will call at your office either on Wednesday or Thursday next to speak to you about the latter.

Very truly yours,

1/59  
Ministry of Justice.

9th. January 1905.

Mr. Padoux, Legislative Adviser,

to

His Royal Highness Prince Rajaburi Darskrit,

Minister of Justice.

Your Royal Highness,

Referring to the verbal application which I submitted to Your Royal Highness a few days ago, I have the honour to ask the Ministry of Justice for a leave of absence to Europe. My original agreement with the Ministry of Justice was signed in Paris on the 9th. of December 1904. I left Marseilles almost immediately and reached Bangkok on the 26th. of January 1905. The third year of my service will be completed at the end of the present month, and although my family and myself have kept well in Siam, we do not feel able to stand a fourth hot season in the tropics. If Your Royal Highness would kindly grant my application, I would like to be allowed to leave on the 16th. or 17th. of March 1905, so as to catch the French mail due in Singapore on the 23rd. of March.

Since the Siamese Government is anxious that the work of codification should not be delayed, it occurred to me last year that it would be a good thing to take advantage of my leave and stay in Paris to push it forward. In a memorandum dated 10th. April 1907, I accordingly expressed the following views:

"For the completion of the preliminary draft of the Code of Criminal Procedure, as well as for the compilation of the other drafts, an Assistant Legislative Adviser will be necessary. One single man, whatever his zeal might be, cannot carry out alone such

considerable

considerable work as general codification entails. Large and comprehensive laws are to be looked at by several competent persons. One points out the defects which the other one might overlook. Besides, to undertake it alone would exceed the time which one may expect to be able to stay in a tropical country like Siam. For these reasons, and after the experiment I have made with the Penal Code, I would not dare to undertake the codification of the Civil and Commercial Law of Siam without the assistance of some able persons. One assistant and one secretary are the minimum staff one may require for such an important work as contemplated by the Siamese Government. Similar work has been carried out in other countries by commissions including a large number of trained lawyers and officials having the practice of the Code system. I do not think that a general codification was ever commenced with such a small staff as the one I propose to appoint.

However, the services of the Assistant are not required just now; the preliminary work for the Code on Obligations will be carried out by the Secretary, and I myself will prepare the Code of Criminal Procedure. I could therefore, - if the Government agrees on the principle, - select the Assistant on my next leave only.

Assuming that the abstracts concerning the Code on Obligations be ready by the middle of the year 1908, the shortest process I would recommend to the Government for the preparation of a preliminary draft is to make the <sup>framework</sup> framework of it in Europe. For doing such a work quickly and safely, one must have at hand all possible means of information, either books or opinions



of competent lawyers. In a place like Paris, the Legislative Advisor and his Assistant would be able to decide on the general distribution of a Code on Obligations and to frame out the most important provisions of it in less than half the time it will take in Bangkok. Being based on the abstracts <sup>compiled</sup> ~~in 1922~~ in Siam it will embody the Siamose practice as well as the best results of modern jurisprudence. When coming back to Bangkok, we might in rather short time put it in the form of a draft Code to be submitted to a Commission of Siamose Lawyers and Advisors, and afterwards revised by a Higher Commission, just in the same way as was so successful with the Penal Code."

Since this memorandum was written, the Siamose Government has engaged the services of M. L'Evesque, a doctor in Law of the Paris University, who arrived in Bangkok on the beginning of September and has already given valuable assistance in compiling abstracts of the Siamose Civil Law. The part of his work connected with Obligations and Contracts will be completed, as I expected, by the middle of 1908. In other words, the work could be accomplished as proposed in the memorandum of the 10th April. I do not think it necessary to discuss at length the urgency of engaging the services of an Assistant Legislative Advisor. The more I consider the question of codifying the Civil Law and Procedure, the less I feel inclined to take up alone such a large and important piece of work. To my personal knowledge, there is no instance that a Government has found it safe to entrust one man even with a simple revision of an existing Code, or that a lawyer has been so bold as to undertake it. I would neither accept nor advise my assuming so great a responsibility.

As to preparing part of the work in France, I consider it would both save time and produce a better result. There are very few places where lawyers entrusted with the compilation of Codes may find the necessary books and information. Before laying down the foundations of a Civil Code, one has to hold up his mind on several fine and fundamental distinctions. There will be for instance a question whether we shall follow the plan of the French Civil Code, that is to say the system of the "Institutes" or the system of the "Pandects" adopted by the German Code. I do not think it possible to settle these points in Bangkok. These are questions on which one is naturally compelled to consult with jurists and to hear expert opinions. I myself have not considered these questions for a long time, and I am afraid my present knowledge is rather inadequate or out of fashion, as I could not keep informed of the latest theories in legal science. Besides, the framing of a draft Civil Code involves a number of queries which are impossible to answer without the proper books or technical men. Points will undoubtedly be raised which would delay us for weeks in Bangkok, whilst in Paris they may be investigated and settled in a few hours.

As to the length of time to be devoted to the work in France, it is difficult for me to give now any definite figure. For the selection of an assistant, I think of stopping for a few days in Egypt on my way home and seeing whether I can find there a young man being conversant both with French and English Law, and having a full knowledge of the English language. I hope that either in the French Law School in Cairo or in the mixed Courts there may be someone fulfilling these conditions.

conditions. If not, I will select him in France. At any rate, it is unlikely that the services of this man can be available before the judicial year is finished and everyone has taken his usual holiday. On the other hand, I shall have, on my arrival in France, to look after the printing of the French and English versions of the Penal Code, and to do some work in connection with the Criminal Procedure. Besides, I do not expect to receive the abstracts made by M. L'Evesque before the month of September. The work on the Code of Obligations might be started in the beginning of October. I expect that in five months I will be ready for submission to a commission in Bangkok. I would therefore ask Your Royal Highness for one year's leave from the date of my departure in March next. Should this time prove to be insufficient, I will report the matter in due time to Your Royal Highness' decision.

The foregoing proposal is merely the development of the scheme submitted in April last. But, looking at the numerous difficulties which we have experienced since M. L'Evesque's arrival in summarizing the Siam's legal materials and putting them into the shape of codified rules of law, I feel that the work of codification will prove extremely hard, and although I am still prepared to take it up with the assistance of a single deputy, I do not feel so confident that the work will be ended shortly and that its outcome will be satisfactory. Taking into consideration the length of the future Code (viz. 4 to 5,000 sections as compared with 240 sections in the Penal Code) - the composition of the staff (that is to say the Legislative Advisor, the Assistant and the Secretary) - and the unavoidable delay resulting from absence, illness, printing, translation, etc., I cannot guarantee that the Codification will be completed



even in ten years.

If the Siamese Government desires the work to be done in a shorter period and to be really satisfactory, I would advise entrusting it to a commission consisting of four persons, that is to say the Legislative Adviser and three Assistants.

One Assistant I would select on my arrival in France, so that he might join the staff of the Ministry of Justice in October 1909. He would be put in charge of the Code of Criminal Procedure and might have a preliminary draft ready for say April 1909.

I would keep the two other Assistants with me in Paris and start the work with them in the beginning of October 1909. Then, instead of taking up only the matter of Code on Obligations, as proposed in the first scheme, we would lay down the foundations of a comprehensive Civil Code including all matters connected with Civil and Commercial Law, that is to say about twice or treble the matter of the Code on Obligations. We would not have time of course to make the whole draft. But we might do what follows:

1. determine the general scheme and division of the Code;
2. compile a full and accurate draft of the part of the Code concerning Obligations;
3. settle every important and disputable point in the other parts;
4. draw up such other parts of the Code as do not involve a full knowledge of and a constant reference to Siamese Law, namely several parts of the Commercial Law.

The matters <sup>connected</sup> ~~connected~~ with personal status, that is to say family, marriage, inheritance and

tenure



tenure of land would be left apart and taken up on our arrival in Bangkok.

By proceeding this way, the Siamese Government would have much better work done. The cooperation of four technical men who are jurists and trained in every matter connected with codification is a guarantee that no errors or gaps will be left in the drafts, each section being discussed in full meeting of the Commission, and each member controlling the work of the other members. On the other hand there will be no fear of lack of harmony between the different books or chapters. If we start with the Code of Obligations alone, we shall have for instance to make provisions in this Code for the capacity of persons, children under age, married women, insanes, etc., because the capacity of the parties is an essential element in the conclusion of any contract. But this means that questions regarding capacity will be decided before the rules applicable to personal status be drawn up, that is to say before the law concerning marriage, rights of parents and guardians, etc., is examined and determined. If we do not take up this law until after the enactment of the Code on Obligations, we may come to a dead-lock when trying to make the new provisions consistent, with those already promulgated. On the contrary, if the several parts of the Civil Law are taken in hand at the same time, there will not be any possible lack of harmony. Whenever a principle of law is discussed or adopted, the Commission will be able to see at once what consequences it involves and what influence it may have on the other parts of the Law. No final decision will be reached on one point without the other points being made consistent with it.

Codification is a work which requires much method and coherency. If entrusted to one or two persons

only

only, there is always a risk that these persons will not bring it to completion. Any alteration in the direction of the work entailing alteration in the spirit and method, may be highly detrimental. It is not safe for a Government to let the future of so important an achievement depend on the health of one or two Advisers. If the second scheme which I now submit to Your Royal Highness be adopted, we would avoid the risk, and we might confidently expect that the whole set of Codes and Laws included in the general codification will be completed by the end of the year 1911 or at least during the year 1912, that is to say in about four years.

It would be a great achievement for the Siamese Government and a vast improvement in the administration of justice. Besides the great advantages which Siamese subjects will derive from the promulgation of Codes that are simple and clear, the Government will, by the operation of the treaties, recover its full jurisdiction over Japanese subjects and French Asiatic subjects and proteges, thus doing away with the Japanese Consular jurisdiction and with the French system of International Courts. The success of any eventual transfer of jurisdiction over Europeans also largely depends upon the future of Codification. It would not be advisable for the Siamese Government to accept such transfer unless they are prepared to push forward the Legislative work. Jurisdiction over Europeans means jurisdiction over large business firms likely to have important lawsuits in Court. How might the Siamese Judges safely deal with these cases in the absence of a definite Civil and Commercial Law? Their judgments may want a legal basis and meet with a considerable amount of criticism. In that respect, I would call the attention of

the Government to the legal position of the other persons who have been or are to be transferred from a foreign Consular jurisdiction to the Siamese jurisdiction or to the jurisdiction of the International Courts. Those persons are or were under different legal systems which are not perhaps too well suited to this country, but have the great advantage of being definite and comparatively easy to ascertain. They cannot consider as satisfactory a system like the present Siamese one where there is generally no written law. The Foreign Powers which have consented to concessions of jurisdiction have accepted that system because they understood that it was a transitory one, to be shortly superseded by a set of Codes. Looking merely at the interest of the Siamese Government, I should say that it is not safe to allow the transitory period to last too many years, thus giving to the Foreign Legations occasions for criticising the administration of justice or the inadequacy of the Siamese Law.

The adoption of the full scheme for the completion of the Codes in four years would not alter my anticipations as to the length of my stay in Paris. Except for circumstances not under my control, I think that five months will very likely be sufficient.

I have the honour to remain,

Your Royal Highness' most faithful.

## Approximate Cost of Codification.

---

### II. Padoux's schemes

1st scheme		Salary.	Rent.
I Assistant at	Tes.	1500	200
I Secretary at	Tes	900	100
		<hr/>	
Total			2700 per month
or Tes. 32,400 per year.			

---

2nd scheme		Salary.	Rent.
I Assistant at	Tes	2000	250
I Assistant at	Tes	1500	200
I Assistant at	Tes	1500	200
I Secretary at	Tes	900	100
		<hr/>	
Total.			6650 per month
or Tes. 80,000 per annum.			

---

In addition, there would be the usual expense for clerks, printing, &c. &c.

Under the first scheme it would take ten or twelve years to finish the Codes, and perhaps never,.....Total cost say.....388,800 Ticals.

Under the second scheme the Codes might be completed in five years.....  
Total cost say..... 400,000 Ticals.



Ministry of Justice.-

Jan. 11. 1908.-

MEMORANDUM.-

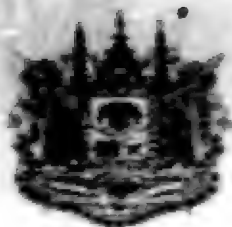
Since it is likely that the Penal Code shall soon come into operation, the Ministry of Justice will probably think it advisable that some practical directions be given to the Judges as to how the Code is to be worked out.

It would be a good thing for that purpose to have some lectures delivered on the subject just after the promulgation. I cannot undertake to do that myself, as I expect going on leave by the middle of March. But I would recommend that the work be entrusted to Mr. Baudour, who has been trained in the Code system, and who has been acting as Adviser for Criminal cases in the Provincial Appeal Court for many years.

A course of about 10 or 12 clear and practical lectures would be quite sufficient to exhaust the subject. Mr. Baudour could prepare these lectures just now, whilst I am still in Bangkok, and I would give him any information and directions he might want, so as to prevent misinterpretations. The Judges and students who are conversant with English ought to attend these lectures. I would also suggest that the young Advisers in the Ministry be



present, since they will have to advise the local courts on questions of construction or application of the Code. One Siamese Judge could be entrusted with the duty of translating the lectures and delivering them in Siamese to those Judges who do not understand English. The Siamese text could be printed and distributed in the different Siamese Courts for the Judges who could not attend the lectures.



กระทรวงมหาดไทย

วันที่ ๑๗ เดือน January ร.ศ. ๑๙๐๘

Dear Monsieur Padoux,

I am directed by H.R.H. Prince Damrong to send you herewith for your information copy of a letter which H.R.H. has just received from Mr. Michell Innes.

Yours truly,

*Phya Sri Sathadul*

Ministry of Finance

Dec. 31. 07

My dear Prince Demrong

The spirit moves me to write to you and that for a definite object. I have heard that the Siamese Government is preparing a code. Whether civil or criminal, I do not know, but it makes no difference. The idea fills me with misgiving. We are suffering in Egypt under the curse of a European code, both civil and criminal. I would give years of my life, if only I could sweep them away, and follow the laws which existed here, before Egypt came much in contact with Europe. European methods of administration are undoubtedly far superior to the methods of the East, and the East has much to learn from Europe in this respect. But the introduction of European codified laws is a misfortune.

The whole criminal procedure here is an acknowledged failure, and when applied to the Bedouins, it becomes an irksome and embarrassing farce. And the code of civil procedure is equally unsuitable, and many of the provisions of the civil code are far more than unsuitable. The introduction of the European theories of debt and of real property, I regard as one of the most unfortunate things which has ever been done. Of course, the English are not responsible for them. They are introduced before we ever appeared on the scene.

There is no code existing in Europe today that could be put in force in its entirety, without creating a revolution. The naked code is modified by innumerable statutes, which soften its action.

action.

The best example of this is the relations of landlord and tenant. If a tenant dose not pay his rent, according to the code, he is a debtor and can be turned out, and everything he possesses can be sold. But the terrible hardship of eviction has been recognised in most, if not in every country of Europe, and there are elaborate land laws, which serve rightly to modify the action of the code

The European law of debt is excessively cruel. It is often better to be a criminal than a debtor. I expect that the customary law of Siam is less savage, and if so, I trust the government will not modify it to make it fit in with the European law. The provisions of the latin codes recarding what are called, I think, "saisies conservatoires", in the case of claims for debt, should never be introduced. They exist here, and cause very serious hardship. They do not exist in England.

When new principles and new procedures are introduced into an old country, people do not forsee the harm they may do. If Prince Rabi is still Minister of Justice, as I hope he is, do tell him what I say and beg him to go slow and not to introduce new principles from the latin codes, under the impression that, because they exist in Europe, they must be right. Many are certainly wrong, and we are slowly and painfully changing them.

Will you do a kindness to me. I am very much annoyed that I did not see The King, either on his way to Europe or on his way back. The fault was not mine, but with the Master of ceremonies. When His Majesty came to Europe, I particularly asked the Master of ceremonies to give me notice when the ship was expected.



expected. He promised to do so, but did not, and consequently I did not hear of the arrival of the ship till it was leaving. On his Majesty's return, I again begged to be told the hour of arrival of the ship, for the purpose of going down to Port Said. A telephone message came to me from the Palace to say that the ship was arriving late at night, and would at once enter the canal, and I was advised under the circumstances not to go, as it would be useless. Consequently of course, I did not go.

Will you tell His Majesty from me that I deeply regret my apparent neglect and want of respect, which has constantly been in my mind. I cannot say how annoyed I am about it, and I shall be deeply grateful to you, if you will be so kind as to explain it. Another time, I shall not trust to an Egyptian Master of Ceremonies.

A great friend of mine, a Mr. Wells, who has been advising the Egyptian Govt: on mining questions, thinks of going to the Malay Peninsula to see the tin mines. If he goes, I will give him a letter to you. He is a first rate man, and absolutely trustworthy, a thing which cannot be said of all people connected with mining.

Believe me my dear Prince,

Yours very sincerely,

(signed) A. Mitchell Innes.



Ministry of Justice.

Jan. 19. 1908.

Mr. Padoux, Legislative Adviser,

to

His Royal Highness Prince Damrong, Ministre of  
Interior.

Your Royal Highness,

I beg to enclose a copy of a memorandum on the Codification which I submitted to H. R. H. Prince Pabi a few days ago, and which I understand was sent to His Majesty.

In this memorandum I propose that a Commission of Codification be appointed including three new legal men, with the assistance of whom I trust that the whole of the Codification could be completed in less than five years from date of appointment. The attached schedule shows that the expense would be almost the same as if I was to spend on the work double or treble the same period of time with one assistant only.

May I hope that Your Royal Highness would support the scheme when the question comes before the Cabinet?

I feel very strongly that for the sake of the work and for the success of any future negotiations concerning extraterritoriality the Siamese Government would do a good thing in deciding the completion of the codification in five years. I am certain that as soon as some

rights of jurisdiction are given back by Foreign Powers over European subjects, the Government will realize how badly clear and precise laws are wanted in Siamese Courts. I discussed the point at full length with the regretted General Adviser; I might say that Mr. Strobel's view on the subject was perhaps stronger than mine.

Phya Sri Sahadheb has forwarded to me a copy of the letter which Your Royal Highness received from Mr. Mitchell Innes. I think I am quite agreeable with the ideas expressed by Mr. Mitchell Innes. His letter seems at first sight destructive of any scheme of codification. But it is simply a matter of construction of the word "codification".

By "codification" Mr. Innes means introduction of brand new codes taken from Western countries. This is the very thing I would never advise to do. Siam is Siam, and the Siamese law must be a national law adapted to the wants of the country.

What I mean by "codification" is putting the local laws in a clear and definite form, sweeping away all inconsistencies, omitting whatever is obsolete or out of use, and reducing the matter of hundreds of volumes of regulations, case-law and commentaries into the shape of some hundreds of sections, so as to enable the man in the street to be easily aware of his duties and rights. This does not mean reference to any particular system of laws other than the system

1/77

which the Siamese Government will consider the most suitable to the inhabitants. To take the very illustration recorded by Mr. Innes, I would not like to introduce in Siam a new law about landlord and tenants. I would like to codify the present law on the subject. This is why previous to any work being done in connection with the Civil Code I caused abstracts and summaries of the present law to be made, which I shall use to lay down the foundations of a draft Civil Code.

I have the honour to remain,

Your Royal Highness most faithful

## Ministry of Justice.

Feb. 4. 1908.

## MEMORANDUM.-

Mr. Padoux, Legislative Adviser,  
to

His Royal Highness Prince Rajhri Direkrit, Minister  
of Justice.

I beg to report that the following work  
has been done during the month of January 1908  
in connection with the proposed Code on Obligations:

1) Several laws have been prepared, viz.:

State Railways Bye-Laws and Tariffs.

Laksana Sab Fong.

Various provisions of law dealing with  
compromise in Court (Laksana Chone, sec.45; Laksana  
Aya Luang, sec.45 & 105; Laksana Sab Fong sec.26;  
Laksana Talakan, sec.92 &c.)

Law on Bankruptcy.

2) about 150 judgments of the Dika Court  
were summarized, including the second half-year 122  
and the first half-year 121.

3) Mr. L'Evesque has begun putting the  
abstracts of laws and judgments in their definite  
form, which we have tried to make as clear and  
complete as possible.



ที่ ๒๓๓

กระทรวงยุติธรรม

วันที่ ๒๒ กุมภาพันธ์ ร.ศ. ๗๖

แจ้งความมายังมอริเซอร์ปาศูร์ เดบิเคเดกิฟนอกไวเซอร์

ด้วยพระเจ้าอุฎยาเธอ, เสนาบดีกระทรวงยุติธรรม  
มีรับสั่งให้ข้าพเจ้าแจ้งความมายังท่านว่า ได้ทรงพระกรุณาโปรด  
เกล้า, พระราชทานพระบรมราชานุญาตให้ท่านลาพักมีกำหนดหนึ่งปี  
นับตั้งแต่วันที่ ๑๕ มีนาคมนี้เป็นต้นไป โดยเจ้าพระไทยว่าการ  
ที่จะรวบรวมกฎหมายนั้นคงจะทำต่อไปในประเทศยุโรป แต่ได้  
ทรงพระกรุณาโปรดเกล้า, พระราชทานพระบรมราชานุญาตให้จ้าง  
ผู้ช่วยแต่งให้ทำตามที่ท่านได้แนะนำอีกสามคน กับให้จ้างหมอกฎหมาย  
ฝรั่งเศษอีกคนหนึ่ง สำหรับมาเป็นผู้พิพากษาประจำในศาลอุทธรณ์  
กรุงเทพ, ด้วย . แต่ในระหว่างนี้ให้รอให้มอริเซอร์เดบิเคเดกิฟ  
ผู้พิพากษาชั่วคราว จนกว่าผู้พิพากษาประจำนั้นจะได้เข้ามาถึง  
กรุงเทพ,

โดยโอกาสนี้ ขอแสดงความนับถือมายังท่านด้วย

พ.ศ. ๒๔๕๐



# Translation

4/2533

Minister of Justice

15 February 190

1908/

H. L. Dya Chikrapani Minister  
 of Justice

to

H. L. Dya Chikrapani Minister  
 of Justice

The Minister of Justice has ordered  
 me to inform you that H. L. Dya Chikrapani  
 grants you one year leave of absence from the  
 15th of March 1908 and understands that you  
 will go on doing the work of codification in  
 his absence and gives you permission to engage  
 three assistants for the codification, as advised  
 by you, and to engage a French doctor in  
 law to be a Judge in the Dhangra Appeal  
 Court. During this time, Judge Nial will act  
 as Judge in the Appeal Court, until the new  
 Judge comes.

## MEMORANDUM

Mr. Padox, Legislative Adviser to  
 His Royal Highness Prince Rajburi Dhirenit  
 Minister of Justice.

I beg to report to Your Royal Highness that, during the  
 month of February 1908, the following work has been done concerning  
 the proposed Code of Obligation :

Dika's judgment of the year 117, 118, 119, 120, 121 (second  
 half ) have been perused and about three hundred and thirty five  
 of them selected and summarized.

Abstracts have been drawn out of the following Laws:

Code of Civil Procedure. Part 16. Execution of Decree and  
 Orders.

Law for abolition of Slavery ( 123 )

Phra Raja Banyat of the fifth Reign

- 1) Law on interest (1230)
- 2) Law regarding documents (1232)
- 3) Town Police Law (1237)
- 4) Law regarding the sale of cattle (1238, 1239,  
1246)
- 5) Prakat forbidding forward agreements for sale of  
paddy ( 1239 )
- 6) Law on collisions (1243)
- 7) Additional Law to Laksana koo He

Several of the foot notes published by Your Royal Highness  
 with the Dika's judgments have been translated and classified under  
 their proper headings.

## THE NEW CODES.

We have already referred to the new Penal Code which has received the Royal sanction and came into force in September next. It is not to be regarded as a foreign innovation merely. It is based on the old Siamese Criminal Law. The jurists who have been engaged in framing the new code have carefully considered the conditions that exist in Siam. When introducing innovations from the European Codes. The subjects dealt with in the Penal Code, and the definitions and and general principles enunciated therein, are alike in all countries, whether the law has been codified or not. The delay in the drafting of the Code has been due to the careful consideration of the new principles which have been adopted in the code for Siam.

### THE CIVIL AND COMMERCIAL CODE.

The next most important step is the framing of a Civil and Commercial Code. M. Padoux, who is now in Paris, is working on the outlines of the new code. M. Padoux has engaged three senior lawyers to aid him in his work. M. Padoux and two of his assistants are now preparing the framework of this code. They are working in Europe primarily because all the necessary books for reference are found only in European Capitals, especially in Paris. In the meantime, M. L'Eveque is now engaged in Bangkok in collecting material for the Code. When M. Padoux and his assistants come back, next March the details of the Code will be dealt with. The third of the assistants whom M. Padoux will engage, will arrive in Bangkok about October, and begin work on the Criminal Procedure.

The Civil and Commercial Code will be comprised of:—

(1) *Law of Persons*, including capacity; nationality; domicile; marriage; property of husband and wife; divorce; consequences of dissolution of marriage; adoption of children with the rights of parents over children; guardianship; gifts; inheritance; administration, etc., etc.

(2) *Property*—Real or immovable property including easements and servitudes, mortgages etc. Personal or movable property including possession, pledges etc.

(3) *Contracts and Obligations*:—The making, effect and termination of contracts; rules in regard to specific kinds of contracts; sale; loan; hiring; surety ship; negotiable instruments, etc., etc.

### CRIMINAL PROCEDURE CODE.

The Penal Code having been completed, it is essential that a Criminal Procedure Code should be drafted. The material for the code is now being got together, and, as already stated, one of the senior lawyers engaged by M. Padoux will begin work on it as soon as he arrives in October.

### AMENDED ACT OF CIVIL PROCEDURE.

While we are referring to new laws, the amended Act of Civil Procedure, which has just received Royal sanction, ought to be mentioned. It is only passed to cover present deficiencies and a more elaborate Code of Civil Procedure will be drawn up after the completion of the Civil and Commercial Code. This amended Act, it must be remembered, is quite sufficient for all practical purposes for some years to come. Certain amendments have been made, which will rid suitors of very serious difficulties under the old Act. The principal amendments are:—(1) The goods of a fraudulent debtor may be attached either before or pending trial; (2) After judgment and decree and writ of execution will be issued at once, and the defendant can only have the writ suspended pending appeal, by a deposit of security; the appellant has also to make a deposit to cover the costs of the other side; (3) The scale of fees has been reduced. Formerly, 2½% on the amount claimed had to be paid as fees, no matter how large the claim was, i.e., if there was a claim for Rs. 400,000, then 10,000 had to be paid in fees. Now, while the scale remains at 2½%, the maximum has been fixed at Rs. 1,000.

This amended Act of Civil Procedure was drafted by a committee composed of H. R. H. Prince B. Jiburi, Minister of Justice (President); H. R. Phya Chakrapani (Under-Secretary for the Ministry of Justice; all the Chief Justices in Bangkok; Mr. J. Stewart Black (Judicial Advisor); and Mr. W. A. G. Tilleke (Attorney-General). The Code was drafted in Siamese, so that there was no trouble about translation.

### BANKRUPTCY LAWS

A new Bankruptcy Act has been drafted, and has received the Royal sanction recently. The Act provides that if the creditors of a debtor can satisfy the Court that the debtor is unable to pay his debts, the Court will immediately seize his property and distribute it. It is not intended for small bankruptcies, as the petitioning creditor must have a claim of not less than Rs. 1,000.

### THE ORAL COURT

When M. Padoux returns with the three senior lawyers whom he will engage in Paris, the permanent Code Commission for Siam will be complete. M. L'Eveque, now working on the Civil Code in Bangkok is already a member.

### THE NEW CODES.

In the drafting of the new Codes, the abolition of extra-territoriality in Siam has always been kept in view, and the laws have been so drafted as to meet the needs of the different nationalities in Siam. There was no great difficulty, in this respect, in drafting the Penal Code. But in the Civil Code, comprising, among other things, marriage and divorce, it will be an uphill task to reconcile and adapt the law to the several communities in Siam. In such matters it has invariably been the practice to legislate according to religion. The skilled jurists engaged on this and other Codes will no doubt be capable of drafting laws which will satisfy these requirements.

Confidential.

83

Office of the General Adviser.

Bangkok. 14 June. 1908.

**STATUS OF COMPANIES IN EGYPT.**

(FROM OUR CORRESPONDENCE.)

CAIRO, MAY 2.

Considerable perturbation has been caused in the financial circles of Cairo and Alexandria by the judgment of the Mixed Court of Appeal, which has pronounced the nullity of the Qly and Agricultural Lands of Egypt (Limited) on the ground that under international law the company has not an English nationality, having been founded in Egypt with an administrative centre there. English companies with an administrative centre in England at the time of their formation are not affected by the judgment, and the same remark probably applies to companies originally formed with a board in England and since transferred to an administrative centre in Egypt. The judgment will probably affect some 20 companies, which may be obliged to transfer their undertakings to new Egyptian companies founded for the purpose. This must necessarily depend on the particular circumstances of each case.

UX.

Orelli has written to me, saying he would like to take some part in the negotiation, and expressing the view that he would be useful because of his knowledge of English and of languages. He has asked

me to suggest how he should go about the matter.

Of course, whether Mr d'Orelli is to be asked to assist in this work or not, depends entirely upon you, and I have been obliged to reply that he must apply to you if he cares to pursue the request. Since, however, he has already mentioned it to you and you have not given him an affirmative answer, I have thought that it must be because you did not see your way, for some reason or other, to meet his wishes. Although, therefore, as I say, I have been obliged to refer him to you, I have (as you will see by the enclosed copy of my reply to him) tried to find a way out of it if you do not care to arrange for him to come into the work.

You will understand that I should like to have you consider this communication as confidential.

Sincerely yours,

*Jens F. Westing*

8.08  
a Wat. as right  
has all. A previous  
administration. 1902  
all  
type. no examples on  
non  
Orelli.  
without engaged  
a clip about his work  
are required (and he  
not rang.  
type.



Office of the General Adviser.

Washington, 14 June, 1908.

Dear Mr. Padoux.

Mr. d'Orelli has written to me, saying that he would like to take some part in the work of codification, and expressing the view that he might be useful because of his knowledge of law and of languages. He has asked me to suggest how he should go about the matter.

Of course, whether Mr. d'Orelli is to be asked to assist in this work or not, depends entirely upon you, and I have been obliged to reply that he must apply to you if he cares to pursue the request. Since, however, he has already mentioned it to you and you have not given him an affirmative answer, I have thought that it must be because you did not see your way, for some reason or other, to meet his wishes. Although, therefore, as I say, I have been obliged to refer him to you, I have (as you will see by the enclosed copy of my reply to him) tried to find a way out of it if you do not care to arrange for him to come into the work.

You will understand that I should like to have you consider this communication as confidential.

Sincerely yours,

*Jens J. Westergaard*

8.09  
J. Westergaard  
has asked R. Padoux  
about codification. He  
has said he has no objection in  
principle, but he has not  
yet decided.  
J. Westergaard  
has asked R. Padoux  
about codification. He  
has said he has no objection in  
principle, but he has not  
yet decided.  
J. Westergaard





ต้นฉบับไม่มีหน้านี้

**NO THIS PAGE IN ORIGINAL**

## M E M O R A N D U M.

Mr. Ch. L'Evesque, Secretary of the Commission  
of Codification

to

Phya Chalrapani, Under-Secretary to the Ministry  
of Justice.

According to Mr. Padoux's direction, I beg to  
report to Your Excellency, that, during the month  
of June 1903, the following, has been done by the  
Legislative Adviser's Office.

1. with regard to the codification, a draft  
of report on the legal rules concerning property  
and rights to property in Siam (which said report  
has been sent abroad to be deferred to Mr. Padoux's  
approval).

2. on the request of Mr. Westengard, General  
Adviser p.i. a draft of an act for the naturalisation  
of aliens in Siam and of Siamese subjects abroad.

*Ch. L'Evesque*

30th. June 1903.

# MEMORANDUM.

Mr. Ch. L'Evesque, Secretary of the Commission  
of Codification

to

Phya Chakrapani, Under-Secretary to the Ministry  
of Justice.

According to Mr. Padoux's direction, I beg to  
report to Your Excellency, that, during the month  
of June 1908, the following <sup>work</sup> has been done by the  
Legislative Adviser's Office.

1. With regard to the codification, a draft  
of report on the legal rules concerning property  
and rights to property in Siam (which said report  
has been sent abroad to be deferred to Mr. Padoux's  
approval).

2. on the request of Mr. Westengard, General  
Adviser p.i. a draft of an act for the naturalisation  
of aliens in Siam and of Siamese subjects abroad.

*Ch. L'Evesque*

29th. June 1908.

Ministry of Justice.

7th. July 1908.

Phya Chakrapani,

to

Mom Udon.

M. Padoux who is now in France has requested that he be supplied with funds to defray the expenses of printing the French and English versions of the Penal Code.

M. Padoux wishes to print 1,000 copies of the French versions of which 600 will be distributed in Europe. M. Padoux considers that the distribution of the Code in French and English will be the best kind of the advertisement for Siam.

As the English version is required at once the Ministry of Justice are taking steps to have <sup>it</sup> printed in Bangkok, but about 300 unbound copies will be sent to M. Padoux. He can have them bound more cheaply in Europe than in Bangkok.

The cost of printing and binding the French edition and binding 300 English copies is estimated not to exceed 2,500 francs.

The Ministry of Justice therefore beg to request that the Legation in Paris be authorized to pay for this work a sum not exceeding 2,500 francs on vouchers to be put in by M. Padoux.



(Copy)

65.2

Ministry of Justice.

25th July 1908.

Dear Williamson,

I enclose a copy of a letter received from M. Padoux regarding the agreements of the members of the Code Commission.

The Ministry of Justice will be glad to be favoured with the views of the Ministry of Finance on the two points raised by M. Padoux as soon as possible.

Faithfully Yours.

(Signed) J. Stewart Black.

(Copy) .

1/ 85.3

Office of the Financial Adviser  
Bangkok.

Dated 27th July 1908.

Dear Black,

I have just seen Prince Chantaburi again about the new agreements for the Codification officials, and, in order not to delay the matter further, he asks me to say he agrees with the view expressed by Prince Rabi, as set forth in your note to me of the 25th instant. That is to say, the salary is to be either T.Cs. 1800- T.Cs. 2000, or \$128- \$140, whichever M. Moncharville may prefer.

There is no objection to the addition proposed by M. Padoux to clause 7 of M. Moncharville's agreement, viz, the words "or after 4 years have elapsed from the date of the commencement of the service of the said M. Moncharville".

Yours sincerely,

(Signed) W.J.F. Williams<sup>on</sup>

(Copy)

254

Ministry of Justice.

28th July 1908.

Dear Williamson,

Prince Rabi came to office to-day and says with reference to Padoux's letter that he agrees to point 1, and that as regards the salary it may appear in the agreement either in sterling or in ticals i.e. the candidates must either take one or the other.

Prince Rabi suggest that ticals now fixed in the agreement, if converted in-to sterling should be converted at about Tds. 14, that is to say the maximum salary is either Tds. 2,000 or (say) £140 per month, the £140 to be paid at the rate for the exchange for the day.

As Prince Rabi wishes to telegraph immediately I shall come round between 3 and 4 p. m. to-day, when I hope the matter may be fixed up.

Faithfully Yours.

(Signed) J. Stewart Black.

Copy.

1/ 85.5

Ministry of Justice,  
Bangkok, Siam.

30 July 1908.

Dear Prince Charoon,

I am writing to you in English in order to be able to catch the mail tomorrow. The Ministry of Justice telegraphed to you on the 30th. July as follows:-

"Inform Padoux Point one of letter accepted. Point two candidates may take either silver or sterling at rate of exchange of last day each month. If sterling agreement maximum salary of appointments one hundred and forty pounds and one hundred and five pounds respectively. Agreements follow".

You will understand from the telegram that each candidate must make up his mind whether he will take silver or sterling.

If silver is taken the agreement will of course remain unaltered except clause 7 has added to it the words "or after 4 years have elapsed from the date of the commencement of the services of the said.....".

If sterling is taken the additional sentence above will be inserted and also the final sentence of clause 4 of the Commission agreements will read as follows "Thereafter after the said..... shall receive the sum of £ ..... sterling per month (or the sum of £..... sterling rising by annual increments of £..... sterling per month to a maximum of £..... sterling per month). The aforesaid salary shall be converted into ticals at the rate of exchange prevailing on the last day of the month for which the salary is due and shall be calculated at the rate advised by such local bank as the Comptroller General to His Siamese Majesty's Government may select.

Clause 3 of the agreement for the Judge of the Court of Appeal and the appropriate clause of the agreement of the Commission member who comes direct to Bangkok will be similarly altered.

The maximum salary in sterling for one member of the Code Commission is £140. (one hundred and forty pounds) and for each of the other two members of the Code Commission and for the Judge of the Appeal Court £105. per month. (One hundred and five).

If a rising salary is given then Mr. Padoux may as arranged before give such increments as he thinks fit.

I am directed by the Minister of Justice to ask you. to be good enough to show M. Padoux this letter and to sign the agreements when altered as above.

Faithfully yours,

(Signed) J. S. B.

P.S.

The members of the Code Commission will of course be paid in francs in France. I gathered from M. Padoux's letter that M. Moncharville was getting a maximum of two thousand francs but if necessary the salaries can be so arranged that two men do not exceed a maximum of Frs.3.500 (£245) and the third Frs.1.500 (£105).

(Signed) J. S. B.



(Copy)

1/857  
Ministry of Justice.

Bangkok, Siam.

30th. July 1908.

Dear M. Padoux,

I have just time to write a line to catch the mail which leaves to-day.

The Ministry of Justice has written to Prince Charoon to-day and you will find in that letter the agreement regarding the new agreements fully explained.

Neither Prince Rabi nor the Treasury would entertain your proposal but the solution offered has been made by Prince Rabi and I think it is a very fair settlement of the question.

As the men have the choice of silver or gold, I think you should impress upon them that no matter what the value of silver may be, they should not sign the agreements with any idea that any claim for compensation will be entertained, or that they will be allowed to alter their minds out here, and change from gold to silver or vice versa, if they see that they have chosen the least favourable currency. It would also be advisable if you can so arrange it to let the men have identical agreements.

If you find a difficulty in getting good men who understand English it would be just as well to take men who have no knowledge of English. After all the Code is drafted in French, can be translated by competent men in Europe at little expense.

Faithfully yours.

(Copy)

4/85.8

**Telegram Siazaduto Paris.**

<sup>Inform</sup>  
~~In-from~~ Padoux Point one of letter accepted. Point  
two candidates may take either silver or sterling at rate  
of exchange of last day each month. If sterling agreement  
maximum salary of appointments one hundred and forty pounds  
and one hundred and five pounds per month respectively.  
Agreements follow.

(Signed) Rabi.

(Copy)

Pralongnan, July 29th, 1908.

Mr. Padoux, Legislative Adviser,  
to  
His Royal Highness Prince Rajburi,  
Minister of Justice.

I beg to report that I have engaged as a second member of the Code Commission for the special purpose of drafting the Code of Criminal Procedure M. Guyon, 32 years of age, doctor in law of the Paris University, a former barrister at law, and at present a "Substitut du Procureur de la République à Bourges", that is to say a Deputy Public Prosecutor in a French Court.

Since I thought the best man for the Criminal Procedure would be a jurist having the practice of the Public Prosecution, I apply to the Minister of Justice in Paris and caused a circular to be sent to the various French Courts, stating the conditions required and the terms offered by the Siamese Government. Fifteen applications were made. I selected Mr. Guyon as the best applicant and the more suitable for the Ministry of Justice in every respect. I am certain that Your Highness will be satisfied with Mr. Guyon's services. The only weak point is, of course, the knowledge of English. Mr. Guyon understands legal English quite well. At his final examination for the grade of doctor in law he submitted as a "these" an elaborate essay on the Australian Constitution of the year 1900, compiled after the official English documents. But he wants some practice before being able to speak. We arranged that he should stay two months in England during the summer time.

1/95-10

Since I could not examine the several applicants and come to a final agreement with Mr. Guyon before the middle of July, it was impossible for him to leave for Bangkok at the end of September, as originally contemplated. Besides staying some time in England, he is to marry before leaving. Granting him two months in England and three or four weeks for his marriage, he might take the French Mail at Marseilles on the 25th of October.

The salary was fixed at 1500 ticals <sup>a</sup> per month. No provision was asked for a particular rate of exchange, but Mr. Guyon is prepared to accept any loss resulting of any diminution of the exchange value of the tical, provided such value might not be reduced under 1/4. I must say that if there had not been rumours as to a possible fall of the tical I could have easily arranged the salary at 1400 ticals, at least for two years.

I have received and examined a number of applications for the third place in the Code Commission, but none of them was satisfactory. It is too late now for making further enquiries. Every one is taking his usual summer holiday. I have then postponed the whole matter up to October next. It might delay the beginning of the work in Paris, but I consider it is better to lose two or three weeks than to make an unsatisfactory appointment.

I have the honour to remain

Your Royal Highness most faithful

(Signed) Padoux.

P.S. According to the French Regulations, officials of the Ministry of Justice who are engaged by Foreign Governments cannot maintain their connection with the French administration unless they are provided with judicial functions.

(18511)

The Ministry of Justice do not consider the position of a member of the Code Commission as a "judicial position". Would it be inconvenient for the Siamese Government, when Mr. Guyon arrives in Bangkok, to provide him with a commission as a Judge in any of the Siamese Courts. It would not cost anything to the Government. It might even be useful for the Government to have one more European Judge at its disposal. Besides, Mr. Guyon would have a better practice of the Siamese Criminal Procedure if he might sit say in the Criminal Court or in the Provincial Appeal Court for some time. It must be understood, of course, that since his time and efforts are to be devoted to the codification of Criminal Procedure, he would only sit in Court when occasion shall require. 1



## MEMORANDUM.

.....

Mr. L'Evesque, Secretary to the Commission  
of Codification

to

His Excellency Phya Chakrapani, Under Secret-  
ary of State to the Ministry of Justice.

According to Mr. Padoux's directions, I beg  
to report to Your Excellency that the following  
work has been done within the month of July 1908 in  
the Legislative Adviser's Office:-

1. With regard to the Naturalization Act,  
the former draft has been worked again upon new lines.  
& Rules to be framed under this Act have been drawn  
up.

2. With regard to Codification, the inquiry  
into the specific modes of acquisition of property  
in Siamese Law has been started and the matter con-  
cerning occupancy, acquisitive prescription and the  
transfer of the ownership right by the mere effect of  
an agreement has now been worked out.

*Ch. L'Evesque.*

21st. July 1908

(Copy)

1/861

Ministry of Justice.

10th. August 1908.

Dear Williamson,

• On the 8th. July last the Ministry of Justice wrote to the Ministry of Finance asking that a sum of 2500 francs be placed at the disposal of the Siamese Minister in Paris to defray the expense of printing the Penal Code in French.

We have received no reply to that letter yet, and I would be much obliged if you would let me know if the necessary instructions have been sent to Paris.

This amount has I understand to come out of the special fund set apart for the expenses of Codification which is the sum of 400,000 ticals.

Faithfully yours.

(Signed) J.S.B.

(Copy)

Office of the Financial Adviser.

Bangkok Siam.

Dated 11th. August 1908.

Dear Black,

Referring to your note of the 10th, just received, I find that an official letter was sent yesterday to the Ministry of Justice asking for further information as to the source from which the expenditure in question is to be met.

Yours sincerely

(Signed) W.J.P. Williamson.

Légation Royale  
de  
Tunis

Tunis

5<sup>th</sup> Oct. 1905

Dear Monsieur Padoux

Many thanks for your letter  
of the 1<sup>st</sup>. I am replying quickly  
to your letter regarding the  
Commission. I hope you  
have found comfortable quarters.  
When can I come & call  
at Madame Padoux.

Yours sincerely  
Charron

~ ๓๐๓๓๓๓๓๓๓

Paris 6<sup>th</sup> October 1908

*Légation Royale  
de  
Siam*

No. 784

Sir.

I beg to acknowledge the receipt of your letter of 3<sup>rd</sup> instant by which you have been good enough to inform me that in compliance with the directions of the Ministry of Justice, the Commission of Codification has begun work on the first day of this month.

While thanking you for this kind communication, I beg to remain Sir

Yours faithfully

*Charvot*

Minister for Siam

To Mr. Paooux  
Legislative Adviser  
Paris

been practising English and collecting materials for the Criminal Procedure Code. I allowed him to stay a fortnight more in London. He is to leave Marseilles on the 8th November. Since his salary is due only from the date of his leaving France, I thought that the Ministry of Justice would rather



10 k  
Paris, October 1st. 1908.

Mr. Padoux, Legislative Adviser,

to

His Royal Highness Prince Rajburi, Minister of Justice.

Your Royal Highness,

I beg to inform Your Royal Highness that Mr. Moncherville's agreement was signed on the 1st. inst. upon the terms which I previously reported to the Ministry. The salary was fixed in francs. Formal copies of the agreement are sent to Bangkok through the Legation.

The Codification work began on the same day. We are engaged at present in perusing the German, Italian, Japanese and other modern Civil Codes; I expect that we shall be able to decide next week on the general scheme to be adopted for the draft Siamese Code.

I am sorry I could not yet find the third member for the Code Commission. But I have got informations about barristers in the Paris Bar who might fulfil our requirements.

Mr. Guyon is still in England, where he has been practising english and collecting materials for the Criminal Procedure Code. I allowed him to stay a fortnight more in London. He is to leave Marseilles on the 8th november. Since his salary is due only from the date of his leaving France, I thought that the Ministry of Justice would rather

prefer that he should be in Bangkok later but with a better knowledge of english.

I have the honour to remain,

Your Royal Highness most faithful

8 \* Rue Margueritte,  
PARIS XVII.

## OBLIGATIONS.-

## PRELIMINARY - DEFINITIONS.

## BOOK I. - HOW OBLIGATIONS ARISE.-

## TITLE I. - CONTRACTS.-

## Chapter I. - Conditions of validity of Contracts.

## Part I. Legal capacity to contract.

Minors,  
Insane persons,  
Juridical persons.

## Part II. Consent express or implied.

## I. Proposal and acceptance.

## II. Defective consent.

Mistake,  
Fraud,  
Duress,  
Unsoundness.

## Part III. Object.

Defined,  
Possible,  
Lawful.  
Not contrary to public policy  
or safety of persons and  
property.

## Chapter II. - Effects of Contracts.

## Part I. Binding effect upon parties.

## Part II. Effects as to third persons.

## I. Prestation by third person.

## II. Stipulation for the benefit of a third person.

## Chapter III. - Determination of Contracts.

## Part I. By Court.

## I. Invalid or defective Contract.

## II. Non performance.

## Part II. By mutual consent.

## Part III. By condition subsequent.

**TITLE II. - UNDUE ENRICHMENT.**

Chapter I. - Undue prestation

Chapter II. - Business management.

Part I. Duties of manager.

Part II. Duties of principal.

**TITLE III. - WRONGFUL ACTS.**

Chapter I. - What may be considered an injury.

Chapter II. - Persons liable

Chapter III. - Damages.

**BOOK II. - OF SOME KINDS OF OBLIGATIONS.**

**TITLE I. - CONDITION.**

**TITLE II. - ALTERNATIVE OBLIGATIONS.**

**TITLE III. - JOINT AND SEVERAL DEBTORS AND CREDITORS.**

**TITLE IV. - INDIVISIBLE OBLIGATIONS.**

**TITLE V. - EARNEST MONEY.**

**TITLE VI. - PENAL CLAUSE.**

**BOOK III. - TRANSFER OF OBLIGATIONS.**

**TITLE I. - BY INHERITANCE.**

**TITLE II. - INTER VIVOS.**

Chapter I. - Assignment.

Chapter II. - Subrogation.

Chapter III. - Delegation.

**BOOK IV. - EFFECTS OF OBLIGATIONS.**

**TITLE I. - POWERS OF CREDITORS.**

Chapter I. - Enforcement.

Part I. Default.

Part II. Cases in which specific performance  
enforceable.

Part III. Tender and Deposit.

Chapter II. - Lien.

Chapter III. - Damages

TITLE II. - POWERS OF THIRD PERSONS.

Chapter I. - Exercise by creditors of debtor's rights.

Chapter II. - Avoidance of contracts made in fraud of creditor's rights.

BOOK V. - DETERMINATION OF OBLIGATIONS.

TITLE I. - PERFORMANCE.

Chapter I. - Who may perform.

Chapter II. - Who may obtain performance.

Chapter III. - What may performance consist of.

Chapter IV. - Appropriation.

TITLE II. - IMPOSSIBILITY OF PERFORMANCE.

TITLE III. - RELEASE.

TITLE IV. - NOVATION.

TITLE V. - SET OFF.

TITLE VI. - MERGER.

TITLE VII. - PRESCRIPTION.



# OBLIGATIONS.-

## PRELIMINARY - DEFINITIONS.

## BOOK I. - HOW OBLIGATIONS ARISE.-

### TITLE I. - CONTRACTS.-

#### Chapter I. - Conditions of validity of Contracts.

##### Part I. Legal capacity to contract.

minors,  
~~Insane persons~~, Lunatics,  
Juridical persons.

##### Part II. Consent express or implied.

###### I. Proposal and acceptance.

###### II. Defective consent.

Mistake,  
Fraud,  
Duress,  
~~Unconscionable~~ Weakness of mind

##### Part III. Object.

Defined,  
Possible,  
Lawful,  
Not contrary to public policy or  
to safety of persons and  
property.

#### Chapter II. - Effects of Contracts.

##### Part I. Binding effect upon parties.

##### Part II. Effects as to third persons.

###### *Effect of clauses involving* I. (Festation by a third person.

###### *Effect of clauses made* II. ~~Stipulation~~ for the benefit of a third person.

#### Chapter III. - Determination of Contracts.

##### *Determination* Part I. (By Court.

###### *In case of,* I. (Invalid or defective Contract.

###### *In case of,* II. (Non performance.

##### *Determination* Part II. (By mutual consent.

##### *Determination* Part III. (By condition subsequent.

TITLE II. - UNDUE ENRICHMENT.

Chapter I. - Undue Prestation

Chapter II. - Business Management.

Part I. Duties of manager.

Part II. Duties of principal.

TITLE III. - WRONGFUL ACTS.

Chapter I. - What may be considered an injury.

Chapter II. - ~~Persons liable~~ Responsible persons

Chapter III. - (Damages Assessment of)

BOOK II. - MODIFICATIONS TO ~~OBLIGATIONS~~ OBLIGATIONS.

TITLE I. - CONDITIONAL OBLIGATIONS.

TITLE II. - ALTERNATIVE OBLIGATIONS.

TITLE III. - JOINT AND SEVERAL DEBTORS AND CREDITORS.

TITLE IV. - INDIVISIBLE OBLIGATIONS.

TITLE V. - EARNEST MONEY.

TITLE VI. - PENAL CLAUSE.

BOOK III. - TRANSFER OF OBLIGATIONS.

TITLE I. - (BY INHERITANCE. TRANSFER)

TITLE II. - (INTER VIVOS. TRANSFER)

Chapter I. - Assignment.

Chapter II. - Subrogation.

Chapter III. - Delegation.

BOOK IV. - EFFECTS OF OBLIGATIONS.

TITLE I. - POWERS OF CREDITORS.

Chapter I. - ~~Enforcement~~. Power of enforcing obligations.

Part I. Default.

Part II. Cases in which specific performance enforceable.

Part III. Tender and Deposit.

Chapter II. - ~~Right~~ Right of lien

Chapter III. - Damages.

TITLE II. - POWERS OF THIRD PERSONS.

Chapter I. - Exercise by creditors of debtor's rights.

Chapter II. - Avoidance of contracts made in fraud of creditor's rights.

BOOK V. - DETERMINATION OF OBLIGATIONS.

TITLE I. - PERFORMANCE.

Chapter I. - Who may perform.

Chapter II. - Who may obtain performance.

Chapter III. - What may performance consist of.

Chapter IV. - Appropriation.

TITLE II. - IMPOSSIBILITY OF PERFORMANCE.

TITLE III. - RELEASE.

TITLE IV. - NOVATION.

TITLE V. - SET OFF.

TITLE VI. - MERGER.

TITLE VII. - PRESCRIPTION.

OBLIGATIONS.-

PRELIMINARY - DEFINITIONS.

BOOK I. - HOW OBLIGATIONS ARISE.-

TITLE I. - CONTRACTS.-

Chapter I. - Conditions of validity of Contracts.

Part I. Legal capacity to contract.

Minors,  
Lunatics,  
Juridical persons.

Part II. Consent express or implied.

I. Proposal and acceptance.

II. Defective consent.

Mistake,  
Fraud,  
Duress,  
Weakness of mind.

III. Ratification

Part III. Object.

Defined,  
Possible,  
Lawful,  
Not contrary to public po-  
lity or to safety of persons  
or property.

Chapter II. - Effects of Contracts.

Part I. Binding effects upon parties.

Part II. Effects as to third persons.

I. Effect of clause involving pres-  
tation by a third person.

II. Effect of clause made for the be-  
nefit of a third person.

Chapter III. - Determination of Contracts.

Part I. Determination by Court.

I. In case of invalid or defective  
Contract.

II. In case of non-performance.

Part II. Determination by mutual consent.

Part III. Determination by condition subsequent

**TITLE II. - UNDUE ENRICHMENT.**

~~Chapter I.~~ - General.

~~Chapter II.~~ - Of certain specific undue enrichments.

Part I. Undue prestation.

Part II. Business management.

I. Duties of manager.

II. Duties of principal.

*Spun money*

**TITLE III. - WRONGFUL ACTS.**

Chapter I. - What may be considered an injury.

Chapter II. - Persons responsible.

Chapter III. - Assessment of damages.

**II. - MODIFICATIONS TO OBLIGATIONS.**

**TITLE I. - CONDITIONAL OBLIGATIONS.**

**TITLE II. - ALTERNATIVE OBLIGATIONS.**

**TITLE III. - JOINT AND SEVERAL DEBTORS AND CREDITORS.**

**TITLE IV. - INDIVISIBLE OBLIGATIONS.**

~~**TITLE V. - EARNEST MONEY.**~~

~~**TITLE VI. - PENAL CLAUSE.**~~

**III. - TRANSFER OF OBLIGATIONS.**

**TITLE I. - TRANSFER BY INHERITANCE.**

**TITLE II. - TRANSFER INTER VIVOS.**

Chapter I. - Assignment.

Chapter II. - Subrogation.

Chapter III. - Delegation.

**IV. - EFFECTS OF OBLIGATIONS.**

*Summary - Binding effect upon parties, heirs, representatives*

**TITLE I. - POWERS OF CREDITORS.**

Chapter I. - Power of enforcing obligations.

Part I. Default.

Part II. Cases in which specific performance enforceable.

Part III. Tender and Deposit.

Chapter II. - Right of Lien.

Chapter III. - *Chapter II* - Preferential rights

Chapter IV. - Damages *of penal clause, earnest money*

**III**



TITLE II. - POWERS OF THIRD PERSONS.

Chapter I. - Exercise by creditor of debtor's ~~rights~~ <sup>actions</sup>.

Chapter II. - ~~Assignment~~ of Contract made in fraud of creditor's rights.

V. - EXTINGUISHMENT OF OBLIGATIONS.

TITLE I. - PERFORMANCE.

Chapter I. - Who may perform.

Chapter II. - Who may obtain performance.

Chapter III. - What may performance consist of.

Chapter IV. - Appropriation.

TITLE II. - IMPOSSIBILITY OF PERFORMANCE.

TITLE III. - RELEASE.

TITLE IV. - NOVATION.

TITLE V. - SET OFF.

TITLE VI. - MERGER.

TITLE VII. - PRESCRIPTION.

100

LIBRARY OF THE CONGRESS PHOTODUPLICATION SERVICE

4 P 155

2014

**Payable à Paris.**

PARIS. le 27 Octobre 1908

Page	Number	Description	Vol.	Price	Total
25	1	Manuel Civil 3 vols.		37 50	34 50
25	3	Indian Contract Act. 1872		4 "	
	3	" specific relief act. 1877		4 50	
	3	" limitation act. 1877		4 50	15 "
27	1	Code civil Suisse			5 50
27	1	" du Bas Canada, relie		25 "	
	1	" de procedure - " - "		20 "	45 "
14	2	Code Federal des Obligations		6 "	12 "
27	1	Schuster's German Law		17 "	
	1	Lyons - Gaen - Manual		11 "	25 "
					141 50

115 Green Lane  
Stoke Newington  
London N

10<sup>th</sup> November 1901

Dear Monsieur G. Padoux

I have received  
your letter of the 7<sup>th</sup> instant  
for which I thank you very much.  
In compliance with your request  
I have sent you by post  
Chalmer's Bills of Exchange &c  
which, in my opinion, is one  
of the best authority on negotiable  
instruments. The book is the  
latest edition and contains the  
full text of the acts of Parliament  
on

115 Green Lane  
Stoke Newington  
London N.

10<sup>th</sup> November 1908

Dear Monsieur G. Padoux

I have received  
your letter of the 7<sup>th</sup> instant  
for which I thank you very much.  
In compliance with your request  
I have sent you by post  
Chalmer's Bills of Exchange &c  
which, in my opinion, is one  
of the best authority on negotiable  
instruments. The book is the  
latest edition and contains the  
full text of the acts of Parliament  
on

the subject together with the  
author's commentaries. I think  
it is the very sort of book you  
require after having made  
careful enquiries on the work.  
I have also enclosed you the  
invoice of the same as requested.

I am glad to be able to  
inform you that I have passed  
the examination on Real Property  
and Conveyancing which is  
the fourth subject, and I am  
<sup>now</sup> only waiting for the Bar  
Final Examination. I hope  
to be able to try for it next  
year i.e. 12 months hence.

I am

Yours very truly  
Chit



115 Green Lanes  
Stoke Newington  
London N.

16<sup>th</sup> November 1908

Dear Monsieur G. Padoux,

I have received  
your letter of the 12<sup>th</sup> instant, and  
in pursuance <sup>with</sup> your request  
I have sent you by post Wharton's  
Law Lexicon, the invoice of  
which is herewith enclosed.

I wish also to thank  
you for your kind Congratulation.  
I am now working for the Bar  
Examination.

I am  
yours very truly  
Chitro

115 Green Lanes  
Stoke Newington  
London N.

16<sup>th</sup> November 1908

Dear Monsieur G. Padoux,

I have received  
your letter of the 12<sup>th</sup> instant, and  
in pursuance <sup>with</sup> your request  
I have sent you by post Wharton's  
Law Lexicon, the invoice of  
which is herewith enclosed.

I wish also to thank  
you for your kind Congratulation.  
I am now working for the Bar  
Examination.

I am  
yours very truly  
Chibon.

Cher homme

Je t'envoie le rapport &  
 les de l'annuaire. J'espère  
 que les lettres de M. de la Roche  
 & une fois un plan de  
 la non contribution  
 de la France à l'œuvre  
 des non non occupés  
 et cinq.

Cher homme

Je t'envoie  
 les de l'annuaire  
 19. 10. 1918

CONSULAT DE FRANCE  
BRÈME

Brême 19 novembre  
1908

Mon cher Consul Général,

M. Max. Nöcker, négociant,  
Libraire & Consul du Japon à Brême,  
am Wall 108, n'a pas actuellement  
à son entrepôt "The Civil Code of  
Japan, translated by Dr. Ludwig  
Eönholm". Il le recevra dans 6  
semaines environ, & me préviendra  
de sa réception. Le prix en est de  
M 10 (port en sus).

M. Nöcker m'a remis la  
liste ci-jointe, qui aura peut-être  
quelque intérêt pour vous. Les  
ouvrages marqués d'une croix  
rouge sont au magasin chez lui;  
quant aux autres, par exemple,  
l'édition française du "Code de  
Commerce de l'Empire du Japon".

Il faudrait les commander  
 spécialement au Japon. (Ceci ne  
 s'applique pas, bien entendu, au  
 Code Civil en langue anglaise,  
 qui, ainsi que je l'ai dit plus  
 haut, est attendu ici vers la fin  
 de l'année.

Dès que j'aurai été avisé de  
 son arrivée, je m'empresserai de  
 vous en aviser, & je vous prie  
 en attendant d'agréer, mon  
 cher Consul Général, les assurances  
 de mes sentiments très distingués  
 & dévoués

Léon Dœuf



<i>Notes dans la forme alphanumérique de la Banque de</i>	
Japanisches Handelsgeleisbuch. <i>Univ. in der vom Oberhaus approbationen</i>	
Uebersetzt von Dr. Ludwig Lohm, Professor an der Kaiserlichen Universität	
Tokio. gr. 8°. 216 S. Brosch.	6.—
Dasselbe in englischer Sprache: The Commercial Code of Japan. gr. 8°. 202 S. Geb.	3.—
Dasselbe in französischer Sprache: Code de Commerce de l'Empire du Japon. gr. 8°. 198 S. Brosch.	3.—
	Geb. 7.—
Japanisches Handelsgeleisbuch nach Einführungsgeleis. Uebersetzt von Dr. Ludwig	
Lohm, Professor an der Kaiserlichen Universität Tokio gr. 8°. 210 S. Geb.	3.—
The Civil Code of Japan. Translated by Dr. Ludwig Lohm. gr. 8°. 210 S. Geb.	10.—
New Japanese Laws, supplementary to the Codes. Translated by Dr. Ludwig Lohm.	
With an appendix containing an English Japanese glossary of commercial	
terms. Published by the Author. gr. 8°. 146 S. Brosch.	6.—
Das bürgerliche Gesetzbuch für Japan. Uebersetzt von Dr. Ludwig Lohm.	
Band 1: Allgemeiner Theil und Sachenrecht. Zweite Aufl. N. 8°. 118 S. Brosch.	2.—
Band 2: Erbrecht. Zweite Aufl. N. 8°. 118 S. Brosch.	2.—
Band 3: Familien- und Erbrecht. N. 8°. 154 S. Brosch.	2.—
	Geb. 4.—
Bergsch, Prof. Dr. Paul, Die Ursache des Fernen Orients. Mit 7 Abbildungen im Text.	
30 Tafeln und 1 Karte. Geb.	12.—
Dasselbe in englischer Sprache: The Hurricanes of the Far East. Geb.	10.—
do. Derische Weltreisegeschichte. Jahrbuch der Breiten Handelsstadt Bremen 1890	3.—
Johannsen, Prof. Dr., Drei Monate auf einer Reisebrücke (Kasien). Brosch.	1.50
do. Ein Besuch auf Meisei, der Insel der Unbeglückten. Brosch.	1.50
Bremisches Jahrbuch. Herausgegeben von der öffentlichen Gesellschaft des Künstlervereins.	
XIX. Band. Brosch.	4.50
Ahlmann, Alfred, Meine Ho Biran. Ein Beitrag zur Geschichte der Metaphysik und der	
Psychologie des Willens. Brosch.	4.50
Fels, Georg, Der Holland in Bremen. Mit 1 Festschrift und 11 Abbildungen im Text. Brosch.	1.80
Janne, Dr. J. H., Unsere Stellung zum Dogma	—30
Johannsen, P., Die Religion Jesu Christi	—60
Kästner, Dr., Dem Volke muß die Religion erhalten bleiben!	—20
Kalenderpredigten in Versen. Von einem Nichttheologen. Brosch.	1.50
	Geb. 2.25
Portig, Dr. A., Evangel. Bewegungen in der katholischen Kirche im 18. und im Anfange des	
19. Jahrhunderts	—60
Reich, Dr. Conrad, Pantheismus, das Gerüst der Religion	—50
Sonnag, Waldemar, Kurz und erbaulich. Geb.	2.25
Wahlstr, W. theol. Julius, Die metaphysische Grundlage des hierarchisch-jesuitischen und des	
sozialdemokratischen Systems und ihre Bekämpfung.	1.—
do. Die brennende Grund und des hierarchischen Systems Rom	—80
do. Neue Hymnen. Nach Briefen St. Dorothea des Hymnen v. Dismarck. Brosch.	1.50
	Geb. mit Goldsch. 2.50
Wend, Dr. Otto, Phantasie und Religion. Brosch.	—80
Wiel, Ernst, Bilder aus der Bremischen Kirchengeschichte des 19. Jahrhunderts	—80
Wiel, Dr. Adolf, Terra incognita	1.50
do. Eingebildeter aus der Weltwirtschaft. Heft 1: Der Tabak	
do. do. Heft 2: Der Reis	
do. do. Heft 3: Die Baumwolle	
do. do. Heft 4: Die Wolle	
do. do. Heft 5: Das Getreide und die Kartoffel	
	1.—
Antel, J., Ein Heirathsgesuch. Pöffe mit Gesang in einem Akt. Mit Klavier-Begleitung	5.—
Aufenthalts, Julius, Derwischen. Ein Märchenspiel mit Musik in 5 Bildern	—75
Aufenthalts, Gustav, Der Page. Komische Oper in einem Akt	—60
Twoer willc Rosen. Volksstück in einem Aufzuge	1.—
Anleitung zur gründlichen Erlernung des Kartenspiels Krieg!	—30
Handbook for Bremen. Englischer Führer durch die Stadt Bremen. Geb.	1.—
Jung, Fantastische Adventures in the Bremen Rathskeller. Brosch.	1.50
	Geb. 2.50
Kühn, Schwachheiten	—20

Mr. Padoux, Legislative Adviser,

to

His Highness Prince Ougroon, N. S. N. Envoy Extraor-  
dinary and Minister Plenipotentiary.

Your Highness,

I beg to report that Mr. Riviere,  
the third member of the Code Commission, has begun to  
take part in the work of codification on the 16<sup>th</sup>  
inst. His salary shall therefore be due from same  
date.

I have the honour to remain,

Your Highness' most faithful

CONSULAT DE FRANCE

BRÈVE

Brême 21 Nov 1908

Mon cher Consul Général,

M. Max Käsler m'a écrit  
ce matin une carte postale  
pour m'informer qu'il serait  
disposé à nous <sup>de suite</sup> adresser son  
propre exemplaire de

"The Civil Code of Japan", M 10.

Il fait toutefois remarquer que  
cet exemplaire est un peu  
endommagé, mais parfaitement  
utilisable.

Veuillez me dire si je dois  
vous le faire envoyer.

Veuillez très sincèrement

dévoué

Eugène Baufé

•

Paris 25<sup>th</sup> November 1909.

Légation Royale  
de  
Siam

~ 12.994

Sir,

I beg to acknowledge the receipt of your letter of 21<sup>st</sup> inst informing me that M. Rivière the third member of the Siam Commission, has begun to take part in the work of this Commission on the 16<sup>th</sup> inst.

I remain Sir,

Yours faithfully

Chasol

Minister for Siam

To M. G. Padoux  
Legislative Adviser  
to His Majesty's Government

CONSULAT DE FRANCE

BRÈVE

Brème 24 nov  
1908

Mon cher Consul général,

M. Max Hösler vous  
a adressé par le même courrier

1 Commercial Code of Japan

1 Civil Code of Japan

dont vous trouverez ci-joint  
la facture acquittée.Veuillez m'en faire parvenir  
le montant (M 20,20) par  
mandat postal.Très heureux d'avoir pu  
vous être agréable en cette  
circonstance, je vous renouvelle  
mon cher Consul général, l'assurance  
de mes sentiments bien distingués  
& dévoués

Régis Seuf



115 Green Lanes  
Stoke Newington  
London N

26<sup>th</sup> Nov. 1908.

Dear Monsieur G. Padoux.

I have received  
your letter of the 24<sup>th</sup> instant  
enclosing <sup>me</sup> a money order of  
£2.9.3. for which I thank  
you very much.

. . . I am

Dear Monsieur Padoux

Yours truly

Chitka

115 Green Lanes  
 Stoke Newington  
 London N.

6<sup>th</sup> December 1908.

Dear Monsieur G. Padoux

I am very  
 pleased to have received your  
 letter of the 3<sup>rd</sup> instant.

There are two  
 books on the Sale of Goods Act  
 1893, which may be put to  
 your election :-

1) Chalmers' Sale of  
 Goods Act 1893, including  
 the Factors Acts 1889 and 1890

Libraire de la  
Cour d'Appel  
et de l'Ordre des  
Avocats

IMPRIMERIE DE LA COUR D'APPEL

DE LA COUR D'APPEL

ET LA MAGISTRATURE

Rue de la Harpe 112

A. PEDONE

Éditeur

PARIS 8 (57) Rue Soufflot, 13 8 PARIS

Paris, le

7 Décembre 1907

Monsieur G. Ladoit

8 Rue Chateaufort

Paris (XV<sup>e</sup>)

J'ai bien reçu votre chèque de deux cents cinquante  
francs et, suivant vos instructions, je vous envoie le  
reçu de cette somme établi au nom du "Ministère  
de la Justice du royaume de Siam".

Recevez, Monsieur, l'assurance de mes  
meilleurs sentiments.

G. Aug. Pedone

G. Monge

115 Green Lanes  
Stoke Newington  
London N.  
12<sup>th</sup> December 1908

Dear Monsieur G. Padoux,

I have sent  
you Chalmers' Sale of Goods Act  
as requested, the invoice of  
which is herewith enclosed.

I hope you will find a  
satisfaction in the book, dealing  
with the topic you require,  
including also the Factors'  
Acts which is an indispensable  
part of the English Law of Sale.

It is not a very big book with most elaborate and refined comments, but I am sure it will serve your wants.

I am now looking for the Final Bar Examination which I hope and try to get through next October. Should I be successful<sup>as I wish</sup> I shall have one year and seven months free, that is to say, with no more examinations.

There is ample time for my Final Bar Examination to start working from now.

So in my spare evening I devote myself in studying the French language — to commence again with a faint knowledge of the language I have learnt very little years ago — the Assumption College, Bangkok.

The Inns of Court have closed for their Christmas & New Year vacation & will not begin again until some time about the middle of January next.

Next April when my Easter holiday comes I shall go over



to stay in France for my holiday  
where I hope to gain a little  
knowledge in the French  
Language <sup>for</sup> which I always  
have a fancy in my mind

I am

Dear Monsieur Padoux

Yours very truly

Chita

CONSULAT DE FRANCE

CAIRE

Le Caire, le 28 Décembre  
1908

Mon cher Comte Jérôme

J'ai beaucoup tardé à vous adresser  
les brochures que vous m'avez demandées.  
C'est que j'ai attendu de pouvoir avoir les  
deux codes que vous désirez avoir au  
printemps dernier, et qui n'avaient  
pas encore paru en librairie à cette  
époque. Je puis cette fois vous les adresser,  
la librairie venant de les recevoir.

Vous m'êtes redevable d'une  
somme de 70 piastres, soit 18 francs,  
que je vous envoie maintenant en

est complète en de  
pense.

à ce que ma lettre vous  
a de changement de lieu  
mes meilleurs vœux pour  
que si vous ne trouvez aucun  
ou que quelques jours à venir  
dans vos parages.

Adieu, mon cher Cousin  
votre dévoué

J. B. St. V.

## MEMORANDUM.

-:-:-:-:-:-:-:-:-:-:-

Mr. Guyon, Member to the Code Commission

to

His Excellency Pura Chakrapani, Under Secretary of State  
to the Ministry of Justice.

I beg to inform Your Excellency that, within the  
month of December 1908, the following work has been done by  
the Legislative Advisor's Office.

A draft for an Act concerning dangerous, unwholesome  
or troublesome works has been drawn up on the request of Mr.  
Westergaard, General Advisor.

I am actually drafting the proposed Code of Penal  
Procedure.

Mr. Levesque perused the Dik's judgments regarding  
inheritance of the year 121.

Smt. January 1909.

Guyon

## POST CARD.

This space may be used for correspondence  
(Post office Regulations).

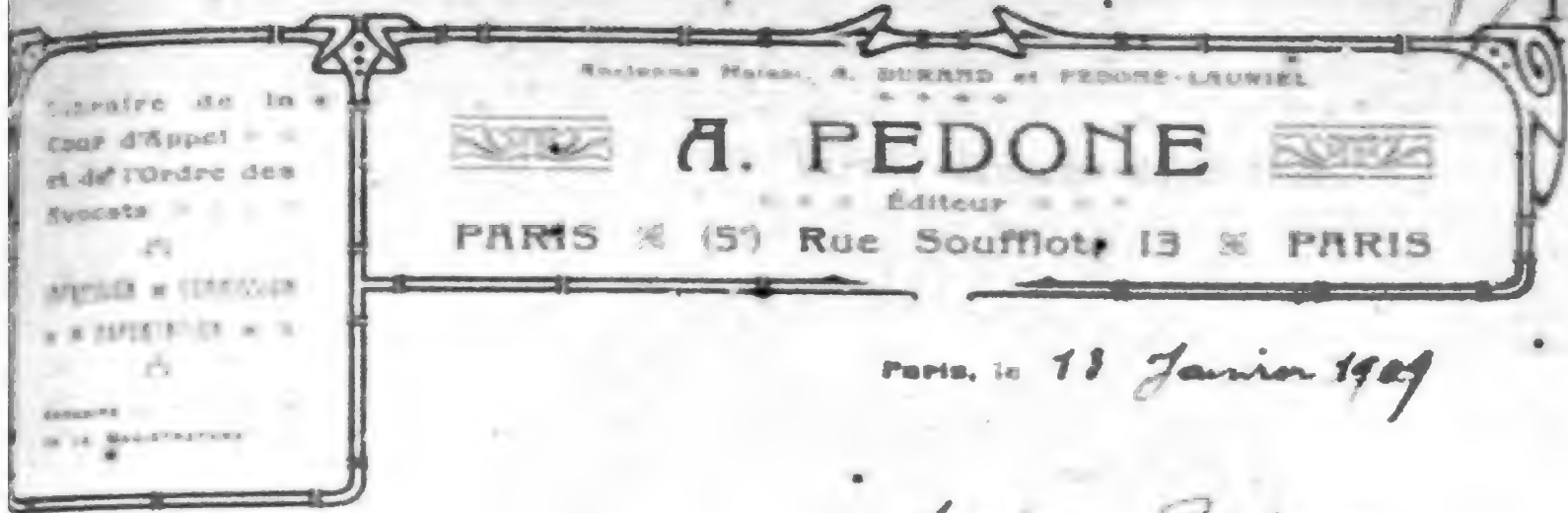
The address to be written here.



5<sup>th</sup> January 1909  
Dear Monsieur Padoux  
Many thanks  
for your letter and the  
postal order of the 2<sup>nd</sup> inst  
received this afternoon.  
With all good wishes  
for the new year.  
Yours very truly, Chitz

Monsieur G. Padoux  
8. Rue Marguerite  
Paris XVII<sup>e</sup>  
France





Paris, le 18 Janvier 1909

Monsieur Padoux  
8 Rue Marguerite  
Paris (XIV<sup>e</sup>)

J'ai l'honneur de vous remettre sous ce pli, un reçu de 29.55 en échange du chèque de même somme que vous avez bien voulu m'envoyer en paiement de ma facture du 11 Janvier courant, établie au nom du Ministère de la Justice du Royaume de Siam.

Recevez, Monsieur, l'assurance de mes sentiments distingués.

Dr. Aug. Pedone  
G. Noye

promote at many sections.

The German Code has a very fine theory about what they call "Acts-in-the-Law" or "Juristic Acts" and about "Unilateral expression of intention" as

Paris, January 28th 1909.

Your Royal Highness,

I beg to enclose a copy of the general distribution of the draft Civil Code on which I have finally agreed with my assistants. It is of course subject to Your Royal Highness approval and to such subsequent modifications as may be found to be advisable during the progress of the work itself.

Our draft differs from both the French and the German classification.

The distribution of the French Civil Code is rightly considered as obsolete and illogical. Real rights, for instance, are divided into two parts, one of which (ownership) is in the middle of the Code, the other one (possession) being at the end. Successions are mixed up with obligations. Division of property between husband and wife is apart from marriage. Gift is not included in the Contracts, etc.

The German classification is more scientific, but it is too technical, and sometimes very intricate. The ordinary Siamese judge would certainly not understand some of its distinctions. We are perusing the German Code at every meeting, and even technical men like Messrs. Moncharville and Rivière are getting into trouble at many sections.

The German Code has a very fine theory about what they call "Acts-in-the-Law" or "Juristic Acts" and about "Unilateral expression of intention" as

likely to create obligatory relations. It seems hardly possible that such provisions be translated into Siamese, judging from the difficulties which were met in translating the very simple wording of the Penal Code. Japan has adopted in her Code the German theory, but the Japanese Code was enacted only a few years ago, and the German juridical system had been previously taught for many years in the Tokyo University by German Professors and also by Japanese Lawyers who had carefully studied the German legislation. Besides, even the German system has its drawbacks: for instance, in the Japanese Code, which is framed after the German Code, the provisions about contracts are to be found in Book III, Obligations, Chapter 2. But capacity of parties to a contract is governed by Book I, Chapter 1. Rules about intention of the parties are in Chapter 4. Joint Obligations are in Book III, and conditional obligations are in Book I, and so on. We therefore propose to embody the whole theory of "Acts-in-the-Law" in the part concerning Obligations, where Juristic Acts are simply considered as legal relations between two or more parties.

The actual position of the work is as follows:

We have entirely left aside the several parts which are to be prepared in Bangkok, either because they are not connected with general theories of law, or because they are connected with local laws and customs. These parts include:

Book I concerning natural and juristic persons.

Book II, Divisions I, III & IV, viz. Object of real rights, Ownership and Servitudes.

Book IV, dealing with inheritance.

Book V. provisions of private international

Law.

The remainder includes the Obligations (with the exception only of some specific contracts) and the general theory of possession. These are the parts for the preparation of which we have constantly to refer to modern theories and modern books.

The Divisions I, II & III of Book III are ready. The Titles 1, 2, 3 & 4 of Division V are also entirely drawn up.

We have still to examine Division IV of Book III, that is to say Determination of Obligations, also several specific contracts (Deposit, Agency, Suretyship, Negotiable instruments, Associations), and the theory of possession. I tried to include in my programme the part concerning private international law, but I do not think we shall have sufficient time to examine it. The beginning of our work was delayed at a certain extent by the appointment of M. Rivière, whose services I could not secure before the 15th of November. On the other hand, the work which we are doing now involves a general survey of the whole of the Civil Law. Such a general survey is indispensable, and I feel now that I would not have assumed the responsibility of carrying out the compilation of a comprehensive system of Law if I had not been allowed time for the technical training which I am now undergoing.

So far as I can calculate, I think that our work will be finished in another two months. I expect therefore to leave Marseilles either through the last mail of March, or through the first mail of April, that is to say either on the 28th March or on the 11th April. I am sorry I cannot be earlier in Bangkok, but Your Royal Highness knows that when I originally submitted proposals to the Ministry of Justice for the comple-

tion of the work of codification in four, or five years. I said that I could not possibly fix beforehand how long I would be obliged to stay in Paris. Your Highness may be certain that I did not waste time, and that the present preparation is an essential element for the future success of the work.

I have the honour to remain,

Your Royal Highness most faithful



## CODE CIVIL.

---

### LIVRE PRELIMINAIRE : DISPOSITIONS GENERALES.

**LOI.-** Caractère obligatoire  
 Liberté des conventions, sauf celles contraires à l'ordre public  
 Principe de non rétroactivité  
 Promulgation

### DEVOIRS DU JUGE.-

Obligation de juger  
 Si la loi est muette se baser sur la coutume, les analogies, la jurisprudence, l'équité.  
 La bonne foi doit présider à l'exercice des droits et à l'exécution des obligations.  
 Elle est présumée, sauf en cas d'incompatibilité avec l'attention que comportaient les circonstances.  
 Sauf le cas de légitime défense on ne peut se faire justice à soi-même.

### LIVRE I. - PERSONNES.

#### TITRE I. - PERSONNES PHYSIQUES.

##### Chapitre I. - Etat des personnes en elles-mêmes.

###### Partie I. - Nationalité.

###### Partie II.- Capacité pour l'exercice des droits civils.

###### Majorité.

###### Emancipation.

###### Interdiction.

###### Domicile.

###### Disparition.

##### Chapitre II. - Etat des personnes dans la famille.

###### Partie I. - Mariage.

###### Fiançailles.

###### Capacité pour contracter mariage.

## CODE CIVIL.

## LIVRE PRELIMINAIRE : DISPOSITIONS GENERALES.

LOI.- Caractère obligatoire  
 Liberté des conventions, sauf celles contraires à l'ordre public  
 Principe de non rétroactivité  
 Promulgation

## DEVOIRS DU JUGE.-

Obligation de juger  
 Si la loi est muette se baser sur la coutume, les analogies, la jurisprudence, l'équité.  
 La bonne foi doit présider à l'exercice des droits et à l'exécution des obligations.  
 Elle est présumée, sauf en cas d'incompatibilité avec l'attention que comportaient les circonstances.  
 Sauf le cas de légitime défense on ne peut se faire justice à soi-même.

## LIVRE I. - PERSONNES.

## TITRE I. - PERSONNES PHYSIQUES.

## Chapitre I. - Etat des personnes en elles-mêmes.

## Partie I. - Nationalité.

Partie II.- Capacité pour l'exercice des droits civils.  
 majorité.

Emancipation.

Interdiction.

Domicile.

Disparition.

## Chapitre IX. - Etat des personnes dans la famille.

## Partie I. - Mariage.

Piançailles.

Capacité pour contracter mariage.

Formalités

Nullités

Effets.

Rapports des époux: Capacité de la  
femme.  
Médiation des biens

Enfants : Autorité paternelle.  
Biens des enfants.  
Adoption.

Dette alimentaire.

Partie II. - Divorce.

Partie III. - Tutelle.

TITRE VI. - PERSONNES JURIDIQUES.

Chapitre I. - Personnes de droit public.

Chapitre II. - Associations - Sociétés.

Chapitre III. - Fondations

LIVRE II. - DROITS REELS.

TITRE I. - LEUR OBJET. - Distinction des biens (meubles  
immeubles, propriété littéraire  
et industrielle).

TITRE II. - POSSESSION.

TITRE III. - PROPRIÉTÉ

Chapitre I. - Domaine public.

Chapitre II. - Propriété privée.

Partie I. - Modes d'acquisition

I). - Occupation (animaux capturés).

II). - Prescription.

III)). - Accession.

IV). - Convention (renvoi).

V). - Succession (renvoi).

VI). - Tradition.

VII). - Invention.

VIII). - Spécification.

Partie II. - Etendue.

- I). - Fruits
- II). - Accessoires.
- III). - Copropriété.
- IV). - Limitations résultant du voisinage.

Partie III. - Restrictions dans l'intérêt public.

- I). - Expropriation pour cause d'utilité publique.
- II). - Mines.
- III). - Forêts.

TITRE IV. - SERVITUDES.

- Chapitre I. - Servitudes légales (passage, écoulement des eaux.....).
- Chapitre II. - Servitudes conventionnelles (entre autres: usufruit, habitation, superficielle).

LIVRE III. - OBLIGATIONS.

LIVRE IV. - SUCCESSIONS ET TESTAMENTS.

LIVRE V. - DISPOSITIONS DE DROIT INTERNATIONAL PRIVE.

TITRE I. - CONDITION DES ETRANGERS.

- Chapitre I. - Personnes physiques.
- Chapitre II. - Personnes juridiques.

TITRE II. - CONFLITS DE LOIS.

- Chapitre I. - Principe de la personnalité des lois (limite: lois d'ordre public).
- Chapitre II. - Conflits relatifs aux personnes (état et capacité)
- Chapitre III. - Conflits relatifs au patrimoine (meubles et immeubles).

TITRE III. - FORME DES ACTES (locus regit actum).

TITRE IV. - EFFETS DES JUGEMENTS (nécessité de l'exequatur).

MEMORANDUM  
-:-:-:-:-

Mr. Guyon, Member to the Code Commission

to

H. H. Prince Rajburi Dirotit, Minister of Justice.

I beg to inform Your Royal Highness that, within the month of January 1909, the following work has been done regarding Codification.

I went on perusing the Siamese laws & regulations relating to Criminal Procedure & I began to inquire into the matter-of-fact operation of such rules by attending the sittings of the Borispah Court during a fourteenth; lastly, with Mr. Lawson's assistance, I looked into the police system of Bangkok.

With regard to Mr. L'Evesque, he perused the judgments relating to inheritance given by the Dika Court from 1901 to 1907 & put his report on the Siamese inheritance law in its definitive form. Later on he started the work regarding law on husband & wife by translating the Latana Phua Kae.

11th January 1909.



(Copy)

MEMORANDUM.

\*\*\*\*\*

Mr. Guyon, member to the Code Commission

to

His Royal Highness Prince Radjburi Direkriti,

Minister of Justice.

I beg to inform Your Royal Highness that, within the month of February 1909, the following work has been done regarding codification.

Proceeding with the draft of the proposed Code of Criminal Procedure, I attended, within the former fortnight of the last month, to the sitting of the Criminal Court, and within the latter fortnight I made an inquiry into the proceedings of the Foreign Causes Court and the Bangkok Appeal Court with the kind assistance of the judges to these Courts. Also I visited the Bangkok jails.

At last I beg to inform Your Royal Highness that, according to the wishes, I mean to go this month to Chantaboon to take an account of the working of the Provincial Courts.

With regard to Mr. B'Evesque, he went on with his work relating to the family Siamese law by perusing the Laksana Tat, Laksana Lakpa, and the provisions dealing with such matter of Laksana Bet Set, Laksana Koo No, Laksana Rap Fong, Laksana Moradok &c. He began also to study jurisprudence by looking over Dika's judgments of the years 120, 121 & 122.

(Signed) Guyon.

1st. March 1909.

Ministère de la Justice

Département de la Justice

Paris

No. 1351

14 Avenue d'Eylau,

Paris.

9th March 1909

Dear Mr Radoux,

I was sorry I missed you this morning. I did not know you wanted to see me. I was in at 12 o'clock, but thought you only came to see M. d'Orelli, who gave me afterwards your account for office expenses. I beg to enclose a cheque on the Credit Lyonnais for the amount, namely Frs 733.10.

M. d'Orelli also told me that you wanted to see me on another point, namely about the new Legal Advisers to be engaged for the Ministry of Justice. If you are in doubt I should think the best thing is to ask the Minister. If however you have no time to do this, it would be best to use one's own discretion & do for the best.

Your sincerely

Cha. W.

Paris, March 27th. 1909.

Your Royal Highness,

The Codification Commission is presently completing the work which I described in my last letter. The general provisions concerning obligations, including about 400 sections, are finished. About 300 sections dealing with the principal specific contracts are also compiled. The Commission has practically done the work which I expected to be done during our stay in Paris. I am therefore leaving Marseilles on the 11th. of April, and I expect to be back in Bangkok on the 11th. of May.

I am keeping M.M. Moncharville and Rivière at work up to the beginning of next month. They cannot therefore leave at the same time with me. I must allow them some days for making their preparations. Mr. Moncharville expects to leave on the 27th. of ~~May~~<sup>April</sup>. He is going by the Transiberian Railway, because he is not a good sailor and formerly had very bad experiences in the Indian Ocean. This is the time of the South West monsoon, and it is better that he should not be too tired when arriving in Bangkok. He will be there on the 4th. or 5th. of ~~July~~<sup>June</sup>.

Mr. Rivière is going to London without salary on the 15th. of April. He shall stay there for one month and leave Paris on the 17th. of May. He is also going through Siberia, for the same reasons than Mr. Moncharville. He shall arrive at the end of June.

I have been very much satisfied with the work

done in Paris by these two assistants. Although I have now fully realized the magnitude and the difficulty of the work involved in a général codification, I feel certain that provided nothing interferes, the Codes will be finished within the period of time originally contemplated, that is to say no more than four years from the present moment, and Siam will be definitely released from the fetters of extraterritoriality.

I have the honour to remain,

Your Royal Highness most faithful

(Copy)

MEMORANDUM.

\*\*\*\*\*

Charles L'Evesque, Secretary to the Code Commission  
to

H. E. Phya Chakrapany, Under Secretary to the Ministry of  
Justice.

Mr. Guyon being away, I beg to inform Your Excellency  
that within the month of March 1909 the following work  
has been done regarding Codification.

Mr. Guyon is going on with the draft of Criminal Pro-  
cedure Code.

Mr. L'Evesque has ended his inquiry concerning the  
Persons' law into the Siamese texts and begun to work the  
Dika's judgments dealing with the same matter.

(Signed) Ch. L'Evesque.

1st. April 1909.



## EXPENSES MADE FOR THE MINISTRY OF JUSTICE OF SIAM.

Sept.	7th.	1908.	Typewriting.....	10 fr.	c.
"	14th.	"	Typewriter's bag.....	85	
Oct.	8th.	"	Binding.....	8	25
"	19th.	"	Typewriting.....	50	
Nov.	21st.	"	Subscription Journal de Droit		
			International Privé.....	22	
"	"	"	English Law books .....	62	75
"	27th.	"	Japanese Codes.....	25	30
"	30th.	"	Swiss Code .....	5	10
Dec.	5th.	"	Sundry Law Books.....	150.	
				<hr/>	
				Total.....	418 f.40 c.

# Expenses made on behalf of the Ministry of Justice

9	March	1909	Berthelemy's Administrative Law	11.50
11	"		Book binding	65.80
<del>12</del>	"		<del>Typewriting</del>	<del>11.50</del>
10	"		Paper	11
10	"		Civil Code	
	"		Pardet's Industrial & Literary property	122.25
13	"		Reno films	8.75
14	"		ditto	6.50
22	"		ink cases for law books	14
30	"		Paper	11
30	"		Reno films and ink	11
5	April		Typewriting	60.35
6	"		Book binding	16.50
10	"		Paper	4.75
10	"		Reno films & ink	84.50
10	"		Cost of criminal procedure & total	498.55
				935

Total: four hundred ninety eight francs, 55<sup>00</sup>/<sub>100</sub>

507.90

30.50  
21.15  
9.35

MINISTRE  
DE LA JUSTICE

IMPRIMERIE  
NATIONALE

SERVICE  
DE  
LA COMPTABILITÉ  
ET DE CONTRÔLE

Paris le 9 avril 1909.

Monsieur,

J'ai l'honneur de vous adresser ci-joint le mémoire des impressions qui vous ont été fournies par l'Imprimerie Nationale pendant le mois de Mars 1909.

Le présent mémoire se monte à..... 1601 19

Vous avez versé le 18 décembre 1908. 1416

Il vous reste à payer..... 186 29

Je vous prie de vouloir bien faire verser cette somme, le plus tôt possible, à la Caisse de l'Imprimerie Nationale (de 10 heures à 3 heures), soit en numéraire, soit en un mandat de poste à l'ordre de M. l'Agent comptable.

Agitez, Monsieur, l'assurance de ma considération très distinguée.

Le Sous-Directeur

Le Chef du Service de la Comptabilité  
et du Contrôle.

Le Directeur

*[Signature]*

Monsieur

*Georg. Cadoux, conseiller  
législatif du gouvernement français.*

COMPAGNIE

CRONEO

GRAND PRIX - PARIS 1900  
EXPOSITIO DE BRUXELLES 1905  
MÉDAILLE D'ORDIRECTION  
24 BOULEVARD DES ITALIENS PARIS30, Rue Paradis, MARSEILLE  
Télé. 11-98

Marseille le 10 Avril 1909

Monsieur Paçous  
Hôtel Terminus  
Marseille  
-----

Monsieur,

Nous vous envoyons comme promis à l'Hôtel Terminus  
chambre 48, les fournitures que vous avez bien voulu nous commander.

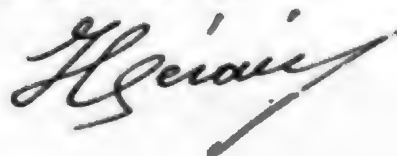
Nous sommes en votre entière disposition si vous avez  
besoin d'autres fournitures, auquel cas croyez Monsieur nous apporterons  
tous nos meilleurs soins pour vous satisfaire.

Nous serions bien intéressés de savoir si les films  
supporteront la chaleur ? vu que nous avons nombre de clients qui  
sont indécis à nous acheter nos appareils pour ce cas là .

Avec nos plus sincères remerciements ,

Veuillez agréer, Monsieur nos bien empressées salutations.

Le Directeur



8 " Reliure  
Imprimerie nationale

183.75  
116.87  
1879.84

## Report

1817-18

14 mar	Copies	9.35	
9 "	Ordes administratifs	11.50	
11 "	Reliure Leloup	65.50	
12 "	Papiers manuscrits	11	
13 "	Ornages de bois	172.25	
13 "	Papiers de bois	8.25	
24 "	"	6.50	
30 "	Papiers manuscrits	11	
30 "	Ordes. promotions	11	
27 "	2 caisses emballage	14	
5 ans	Copies	60.25	
6 "	Reliure	16.50	
10 "	papiers	4.25	
10 "	Ordes. fénus	84	
10 "	Code proc. criminelle	30.50	
	Total	502.90	502.90
			2320.00

## Code Penal

	Imprimerie nationale	1485.
5 fén.	Exemplaires anglais, per-	19.55
25 mar	sorte	2.50
7 ans	Emballage	66.55
8 "	Reliure	185.25
	Imprimerie nationale	116.55
		1829.54



Dépenses pour le compte du  
Gouvernement français

Crédit : 2000 fr. = 3790 fr.

			Total
14 mai 1908	Machins d'armes	580	
20 "	Fournitures diverses	12	
	Total rendu par la Légation	592	592

2 sept. 1908	Copies	10	
14 "	Valeurs machines	35	
5 Octobre	Reliure	8.75	
19 "	Copies	50	
21 novembre	Atournement d'armes	22	
21 "	Livres anglais	62.75	
27 "	Codes Japonais	75.50	
30 "	Code d'armes	5.10	
5 déc.	Facture Bedone	150	
	Total rendu par la Légation	418.40	418.40

16 déc. 1908	Copies	40	
4 janv. 1909	Charmes. Sacs et cordes	11.75	
10 "	Codes Egyptiens	18.75	
14 "	Copies	19.50	
12 janv.	Codes Japonais	29.55	
19 "	Boudry. L'armement	261.	
22 "	Duplicateur Bones	350.	
12 fevrie	Reliure	10.75	
27 "	Copies	44.60	
4 mars	Reliures d'ouvrages	7.50	
	Total rendu par la Légation	793.10	793.10

1818.50

Marseille, April 10 1929

Dear Zina

I am sorry I was so long before sending you the accounts but I only received this morning the bill of the Impremere Nationale. Besides I had several things to buy in Marseille.

The account concerning the Code  
Commission stands at 507<sup>40</sup>

The account for the legal  
code is 395.60

making a grand total of 903.50

The passage money for Mr. Duplatie  
being francs 200 I beg to send you the  
balance, viz. Frs. 1096.50 for which you shall  
find cheque enclosed

I also enclose the full accounts, bills,  
and other papers.

Believe me. . . .

G. P.

To H. H. Brink Charon

in Paris

*Legation Royale  
Siam*

No. 85

Paris. F A D R I D  
21st April 1909

Dear Monsieur Padoux,

I have just received your letter of the 10th instant enclosing cheque for 75000.00 & accounts with receipts of expenditure for Office work & printing the Penal Code amounting to 75000.00, for which I thank you.

I have debited & credited the Ministry of Justice's account with the above sums & will send the accounts in when I get back to Paris. I will not fail to send M. Duplatre his journey money when the time comes. I have also received a bill from Bipe & Bouy but it is not receipted. The P.O.'s receipt for the amount will do. I will however attach their bill to this receipt.

His Majesty's letter to the President about the copy of the Penal Code has arrived by last week's mail. I will make the presentation when I get back to Paris.

I hope you had a pleasant journey to Bangkok & with kind regards to Madame

Believe me,

Your's sincerely

*Chavon*

## MARSEILLE

### LA CODIFICATION AU SIAM

La poussée du Japon vers la civilisation occidentale, la rapide transformation du peuple insulaire, dont les officiers, lors de l'expédition Waldersee en Chine se mettaient en gants blancs pour aller à la mort, les petits Nippons noirs, à l'œil vif, qui ont battu la vieille Europe dans la Russie, portent des résultats dans l'Extrême-Orient. C'est à eux qu'il paraît, en effet, logique d'attribuer les résultats de la grande réforme qui occupe le Siam.

Le Siam, le souverain du pays S. M. Chulalongkorn et son frère le prince Dam-Rong, se sont rendus compte de l'énorme influence occidentale et ont pensé justement que, pour marquer avec les peuples blancs, être représenté avec avantage dans leurs conférences internationales y émettre des avis autorisés et prendre place dans le concert des nations, il fallait adopter au moins les grands principes généraux qui réglementent les sociétés organisées. C'est ainsi que la Réforme en France, puis, l'émancipation des colonies anglaises d'Amérique et la Révolution française de 1789, qu'on a toujours reliées ensemble manifestent jusqu'en Asie leur rayonnement. Car si l'Europe vit l'Amérique, à des degrés divers, suivre ce grand mouvement d'idées, on n'en voyait guère la répercussion en Asie.

Le Japon pourtant donna le branle. Il fit justement apprécier ce que peut un peuple de bonne volonté qui ne subit pas de domination et ce que produit un pays similaire comme l'Indo-Chine qui, malgré aide et encouragement, se cabre sous les conseils du conquérant et manifeste une si lente évolution.

Le Siam a tenu à secouer les vieilles mœurs. Espérons que l'effort demeurera durable. On peut attribuer peut-être les mouvements d'émancipation que l'on constate chez de nombreux peuples à la facilité des communications actuelles qui leur ont permis de se rendre compte de la vie que menaient leurs voisins et les ont souvent incités à les imiter. Dans le grand carrefour qu'est Paris, dans les autres capitales ou grandes villes, que d'étrangers auxquels on a entendu dire : « Ah ! ne plus retourner au pays où y transporter tout ce qui fait actuellement notre activité. »

Depuis la création de son ministère de la Justice, en 1892, le Siam a entrepris la réforme de sa législation. On peut dire que deux mobiles ont dirigé cette mesure. Le Siam a voulu mettre en harmonie ses organes et ses pouvoirs judiciaires avec les progrès économiques réalisés et trouver des points de contact avec les pratiques occidentales apprises là-bas par les négociants et les voyageurs. Ce l'étaient des codes et services judiciaires, n'est donc pas seulement une refonte in- mais encore la suppression des privilèges et des juridictions spéciales dont jouissaient les Européens et le Japon lui-même qui ont guidé le Siam.

La modification de la législation était exigée intérieurement par les nouvelles méthodes d'organisation et d'administration du pays. On sait, en effet, que, grâce à une installation solide de son régime financier, le Siam peut créer et entreprendre. Son crédit lui permet des emprunts. Les chemins de fer puis à peu multiplièrent le réseau de leurs voies. On a profité de l'expérience européenne et l'on peut dire que nos compagnies ne connaissent ni l'économie, ni la prudence, ni, relativement, les bénéfices produits par la locomotion à vapeur siamoise. L'irrigation du Siam a transformé des terres, jusque là inutiles et abandonnées, en rizières fertiles. La police, sérieusement établie, assure la sécurité aux habitants et au commerce. L'armée, calquée sur les systèmes européens, compte comme un moyen important de défense ; une flotte en voie de création l'appuiera de la force de ses canons.

Mais, afin de réaliser son second but, se débarrasser des juridictions européennes gênantes pour l'administration locale, vexantes en ce qu'elles avaient l'air de tenir le pays pour barbare, le Siam a dû se conformer, dans sa codification, à une imitation des législations occidentales. En cela, il a demandé à M. Padoux, consul général de France et conseiller législatif au Siam depuis 1905, de présider la commission de réforme. M. Padoux avait eu, comme prédécesseur, un juriste éminent, M. Schlessier, de nationalité belge, qui avait fait œuvre surtout de science juridique, mais cherchant moins que M. Padoux à accorder les textes anciens avec les pratiques nouvelles. Le consul de France a tenu, en effet, à vulgariser la compréhension des lois. Dans le Code pénal du Siam, terminé et publié, M. Padoux s'est attaché à relier étroitement le droit siamois et le droit européen. Pour cela, il a pensé qu'il fallait faire rédiger le

ment par des pages redoublées, et même, dans une infinité de cas, les réflexions de leur gouvernement sont justifiées, en regard occidental. Le langage était d'ailleurs que cette juxtaposition des lois du monde et de civilisations différentes. Mais il revient à M. Padoux un grand nombre de ces questions. Il n'a pas pu, les codes constitutionnels et les droits, les différences, dans les appliquer au Siam ; il a dû les adapter à la loi du droit naturel. Il n'a pas fait le sacrifice des coutumes trop nombreuses en des règles strictes depuis des siècles qu'on ne saurait retrouver sans étonnement. Il a cependant eu l'intention, réduit dans la mesure de possible les principes et, chaque fois qu'il l'a pu, il a restauré les principes des législations d'Europe et d'Amérique ; les jeunes classes siamoises ne s'apercevront pas de la transformation et s'éclateront peut-être plus tard, si l'effort se perpétue, une volonté du code en laissant de très anciens. C'est un danger. Une œuvre de ce genre doit être avant tout applicable et se garder du succès. Rien n'est plus décevant et

ne fait plus préjuger du caractère d'une doctrine ou d'une réforme que l'impossibilité de se servir d'une loi qui en recouvre une partie. C'est la ruine d'un système.

Ajoutons, à l'honneur de M. Padoux et de la France, que le comité de législation étrangère a juré le Code pénal du Siam digne d'entrer dans la collection des principaux Codes étrangers. Le gouvernement du Siam a d'ailleurs, marqué sa reconnaissance envers notre nation en lui continuant sa confiance et en le chargeant de présider encore la commission instituée pour mener à bonne fin le renouveau de la législation et rédiger un Code commercial, un Code civil, un Code d'instruction criminelle et une loi de réorganisation judiciaire.

Il faut croire que la tendance déterminée du Siam et la présence d'un Français influent auprès du gouvernement, tendront à créer des rapports d'amitié durable entre ce pays et la France. Nous oublions déjà nos anciens griefs comme ils oublient le bombardement de Bangkok. La présence d'une nation indépendante et forte en Extrême-Orient servira aussi, croyons-nous, à établir un équilibre désirable.

Léon MAON.



16 May 1909..

Dear M. Padoux,

You told me the other day that the arrangement of the subject of the Civil Code has been somewhat <sup>altered</sup> ~~interred~~ since you sent me the table of the probable contents from Paris. I should like to have the latest modification with me, because it is quite probable that I may be lecturing on the Civil law in August, and I should like to arrange the subject as near to what will be our civil law in five or six years time as possible. I have begun to think about the subject of my lectures.

The King will be leaving Bangkok on the 21st, instant. I have made arrangement for you to be presented at the Royal landing place on that day. You will have to be there at 6. 30 A.M. It is rather early, but otherwise there is no better opportunity for some time.

Yours truly,

*Rabi*

30th. May 1909.

From M. G. Pacoux, Legislative Adviser  
to H.R.H. Prince Rajburi Direckrit, Minister of  
Justice,

I beg to enclose a copy of the summary of the draft concerning the general rules of obligations. By comparing it with the previous summary, Your Royal Highness may see how far the proposed distribution of that part was altered.

There is one point on which we have not yet reached an agreement. Prescription was originally included in division V concerning Extinction of obligations. But prescription includes the acquisition of property by continued possession as well as the extinction of obligations by lapse of time. All Modern Codes are dealing with "acquisitive prescription" and "extinctive prescription". Acquisitive prescription is part of the law of property. Extinctive prescription, viz., limitation of actions, refers not only to actions connected with obligations but also to actions connected with family, property, inheritance. We propose therefore to make the whole matter of prescription the subject of a separate title. But as to where this title to be placed we cannot yet make any definite proposal.

I have the honour to remain  
Your Royal Highness most *grateful* ~~faithful~~

Bangkok, 22 May 1900.

Dear M. Padoux,

I thank you very much for the early copy of the law on obligations. I must congratulate you on the lucidity of the ~~my~~ style of drafting. I see no difficulty in translating it. Had the style been that of the German Code, I mean the grammatical construction of it, it would have been most difficult. A load of anxiety has been taken off my mind.

Do you think it is sufficiently matured to be put into the hands of translators. Even if we have a great deal of alterations hereafter, it would not be a bad thing for the translators to train themselves up in the translation of it, to get their hand in.

Yours truly,

June 3<sup>rd</sup> 1909

The Ministry of Justice credited me with  
2000 Tes for Expenses for the Code  
 Commission in Paris

2500 Tes for the printing of the French  
 Version of the Penal Code

The expenses for the Code Commission amounted to  
 2326 frs 20 centimes, leaving an approximate balance  
 of 730 Tes.

The expenses for the French version of the Code,  
 including binding, freight, etc. amounted to  
 1880 frs 60 cents, leaving a balance of 619 frs 20  
 centimes, or Tes. 331.

The price of the French Version works exactly  
 at 3 salangs per copy.

*Ganguein time*

*16 July 09*

## ASIA AND EUROPE.

London June 25th.—The Times, in a leading article commenting on an article three-and-a-half columns long from a special correspondent in India, emphasises his statements that the real cause of unrest in India is not Indian, but Asiatic. "Indian agitation is a symptom of wide resentment against European domination, which is finding stronger expression every year throughout the East."

## SIAM AND JAPAN.

### SOMETHING TO STRIVE FOR.

Says the *Strait Times*:—We have no intention of flattering Siam, but justice compels the admission that within the next generation they have made remarkable progress. There are men in the service of the Siam Government as learned in western law as the best of those we advance to positions of judicial dignity and responsibility in India; and if the heads of the State can give a somewhat greater impetus to the task of revising and codifying the civil and criminal laws the claim to rights equal with those which has been conceded to Japan will be hard to resist, and is, besides, an aspiration which we should do our best to encourage in the case of a country that has shown its true appreciation of British friendship.

Says the *Daily Graphic*: The arrangements made for the relinquishment of British extra-territorial jurisdiction are a concession Siam has well deserved by the enlightened and progressive spirit she has shown, and by her very considerable achievements in the direction of organising her administration in the image of the best civilised States. Siam is now one of the best ordered States in Asia, and if she persists in the course she has wisely marked out for herself she may reasonably hope one of these days to emulate the miracle of the Japanese Renaissance.



Regulation Royale  
de  
la Cour

*Sp. 2000*

Ch. Rosen

Je ne saurais  
 vous dire combien  
 j'ai de plaisir  
 de ce que vous  
 parlez avec  
 plus de force  
 l'avenir que  
 les bien-être  
 de la vie  
 et que  
 une poignée de  
 personnes  
 se font  
 à la suite des

que je ne sensait.  
 Je ne me en plain  
 aucunement : au  
 contraire j'aurai  
 un souvenir si d'abord  
 l'union Chocoma plus reconnaissant  
 de m'avoir fourni  
 de mes petites  
 mon croquis —  
 bien modestes, j'  
 crois — que cela  
 m'a été d'un grand  
 service de mes familiers  
 avec une bonté  
 du devoir que  
 je ne pourrais  
 jamais oublier.  
 Je ne pourrais  
 plus difficilement

pour les  
 amis le  
 tout est si  
 qu'il est  
 bon en  
 tout pour  
 sans sur  
 quelque utilité  
 aig. Les hon  
 mes et les  
 vus. L'espèce  
 de vertueuse  
 en. Distinguer  
proprie d'ore

en quelques  
 pour. Appreni  
 de la. Qui  
 en la. Distinguer  
 vus. L'3. f. a  
 pour. une  
 les. Les  
 de cette  
 vus.

July 1909.

MEMORANDUM. -

I. -

The fourth member of the Code Commission, Mr. Rivière, having arrived in Bangkok, I have at once convened the Commission in order to examine how the work of Codification could be now carried on.

Since the British Treaty is at present in force, I understand that the Siamese Government ~~are~~ <sup>desire</sup> ~~extremely anxious~~ to have the whole of the Codification completed as soon as possible, and that they would also like to publish separately and within the shortest period consistent with the nature of the work such parts of the Codification as shall govern the majority of cases in which foreigners are concerned.

It is a most desirable thing that the transitory period between the ratification of the Treaty and the completion of the Codification should not last too many years. It is desirable because on the completion of the Codification the full jurisdiction over the foreigners concerned in such treaties ~~shall~~ <sup>will</sup> be transferred to the ordinary Siamese Courts. It is desirable also because during such transitory period there will be some uncertainty as to the proper law to be applied in a number of foreign cases, and in the absence of any definite Siamese law or practice a case-law mostly based on foreign precedents may be created, which might eventually conflict with

the principles adopted in the future codes and interfere to a certain extent with the publication of these codes.

With regard to the completion of the codification, I cannot say anything more than what I <sup>have</sup> stated in my previous reports. Judging from that part of the work which has already been done, I confidently expect that the whole work entrusted to the Commission shall be finished in four years, say during the currency of the year 1913. Provided, of course, that nothing interferes; I mean, that none of the members of the Code Commission shall be unable to carry on his duties, that the discussion, translation or revision of the various drafts shall not be delayed owing to circumstances not under ~~the~~ control, that unexpected difficulties shall not arise, that more elaborate drafts than <sup>at</sup> present contemplated shall not be required in matters, like commerce by sea, for which I propose to make only short summary provisions. I would like to impress upon the Government the idea that the present staff of the Code Commission is sufficient to execute the work within the specified time, but nothing more. Whatever activity may be displayed by my assistants and myself, the Government cannot expect the Codification to be ended before 1913. As a comparison, I may state that when I took over the compilation of the Penal Code, a large amount of work had already been done. Yet I began looking at the matter in February 1905 and the Code was not enacted until the 1st of June 1908. It took more than three years to get it passed. Now the Penal Code consists of 340 Sections, whilst the rest of the Codifi-



codification may easily include more than 3500 sections.

With regard to the second point, the parts of the codification in which foreign cases ~~are~~ <sup>are likely to be</sup> most concerned are the following:-

Criminal Law.

Law on Contracts, ~~in~~

Law on landed property.

The new Penal Code being applicable in the International Courts, the question is settled so far as the Criminal Law is concerned.

The Siamese Law on land is ~~more~~ peculiar to this country. The new members of the Code Commission are not likely to understand it until they have been in Siam for <sup>a</sup> ~~one~~ year or two. They could not undertake its codification just now. My intention is therefore to leave it to be examined with the Siamese Law concerning family and inheritance, which is to be codified last of all. The delay does not matter very much. The law is so peculiar that it is almost impossible to introduce in it foreign elements by way of case-law.

The most urgently needed part of the Codification is the Law on Contracts. It is earnestly required for the settlement of Siamese cases as well as for the settlement of foreign cases. That is why we took it over first of all. A large part of the work has already been done in Paris by the Commission. Not only the law on Contracts was examined but also questions concerning Wrongful Acts (or Torts) and Unjust Enrichment, that is to say the whole of the matter which is known as "the Law on Obligations" in the modern Codes.

The Siamese Codification as described in the French and Japanese Treaties includes a Civil and

Commercial Code. The Law on Obligations would constitute an important part of such a Code. The Commission has already proposed to the Ministry of Justice to adopt, for the Civil and Commercial Code, the following main divisions:

Preliminary.- General Provisions.

Book I. - Persons

Division I. - Natural Persons (Nationality, Capacity, Marriage, Divorce, Guardianship).

Division II. - ~~Artistic~~ <sup>Juridical</sup> Persons (Corporations, Public bodies, Associations, Companies, Foundations).

Book II. - Real rights.

Division I. - Object of real Rights (Moveable property, Immoveable property, Literary, artistic and industrial property).

Division II. - Possession.

Division III. - Ownership.

Division IV. - Servitudes or easements.

Book III. - Obligations

Division I. - General Rules.

Division II. - Specific Contracts (Sale, Hire, Loan, Deposit, Agency, Pledge, Negotiable Instruments, etc..)

Book IV. - Inheritance and Wills.

Book V. - Provisions of Private International Law.

Even should those main divisions be slightly altered, the Book III "Obligations" <sup>will certainly</sup> ~~will certainly~~ constitute about half of the whole Code. It is therefore a most important piece of work.

As to how the Codification of the Civil and Commercial Law, including Obligations, could be conducted

I have submitted a scheme to the Government in February 1908. I explained then that the Civil and Commercial Law could be made in two ways, either by compiling first a Code on Obligations and afterwards a Code on Family, Property and Inheritance, thus dividing the matter into two Codes, or by publishing the whole of the matter at one and the same time as a Civil and Commercial Code. The second method is the best from the legal point of view. The different parts of the Civil and Commercial Law are closely connected. Rules adopted in matters of Family or Property have an influence on the rules to be adopted in matters of Obligations, and vice versa. The rules of Prescription and Limitation apply to actions arising out of Property or Inheritance as well as to actions arising out of Contracts. The rules concerning Possession, which are part of the Law on Property, are frequently applied in cases concerning Contracts. It is therefore much safer not to promulgate a portion of the Civil and Commercial Law before the other portions have been thoroughly examined. A Civil and Commercial Code compiled and published as a whole is less likely to show gaps or want of harmony.

On the other hand I <sup>can</sup> quite understand that the Siamese Government <sup>might</sup> ~~would~~ like to have the Law on Obligations enacted first and not to wait for it till the whole Civil and Commercial Code is published, ~~that~~ that is to say till the year 1912 or 1913.

Therefore, after having consulted with Messrs. Moncharville, Guyon ~~et~~ Rivière, I beg to submit to the Siamese Government the following proposal, which is likely to meet both sides of the question.

The Code Commission would presently devote the whole of <sup>its</sup> ~~his~~ time to the completion of a Draft ~~code~~

on Obligations, including in it not only Book III of the Civil and Commercial Code, but also such parts of the Preliminary and of Book II (Property) as may be deemed necessary to annex to it. This draft might be published with the following title:

Civil and Commercial Code.  
- Obligations.

After the enactment of the ~~Code on Obligations~~ <sup>(Part concerning</sup> the Commission would take over the Law on Family, Property and Inheritance. But instead of publishing it as a second separate Code, we would amalgamate ~~it~~ <sup>it</sup> with the ~~part~~ <sup>already enacted</sup> on Obligations and issue the whole as a Civil and Commercial Code. The several Divisions or Titles of the ~~Code~~ <sup>Law</sup> on Obligations would be put in such place as originally assigned to them in the draft scheme of Civil & Commercial Code referred above. The ~~main part of the Code on Obligations~~ would become Book III of the Civil & Commercial Code. The part concerning Possession ~~shall~~ <sup>will</sup> be embodied in Division II of Book II, and so on. Meanwhile, such ~~Sections~~ <sup>Sections</sup> ~~of the Code on Obligations~~ as may be found not to be consistent enough with the newly drawn provisions would be amended, and also such Sections as the practice in Court may show to require alteration. The whole will then constitute the Siamese Civil and Commercial Code and would be published as such.

It is not necessary of course that the Siamese Government should publicly disclose their intention to issue the ~~Code on Obligations~~ <sup>Part concerning</sup> as a temporary measure only, and to embody it later on in a more comprehensive Civil & Commercial Code. It ~~shall~~ <sup>will</sup> be quite sufficient to state that the Government has decided to publish first the part of the Civil and Commercial Law which concerns contracts, because it is the most urgently required, the rest of the Civil and Commercial Law to be codified afterwards.



If the Government agree to take that course, we shall at once try to complete the Draft ~~Code~~<sup>Law</sup> on Obligations. A revision of the text framed in Paris is now going on. So far as the 400 sections concerning General Provisions are concerned, the revision ~~shall~~<sup>will</sup> be finished by the middle or the end of August, and those sections ~~shall~~<sup>will</sup> be ready for submission to a Commission including Siamese Members. That Commission may therefore be appointed now. I think it is understood that it shall be composed of the European staff of the Code Commission, and three Siamese Judges, under the Presidency of ~~the~~ the Minister of Justice. The Commission shall be a "Commission for the compilation of a Code on Obligations". Assuming that the revised text prepared by us be ready by the middle of August, it may be distributed at once to the Members of the Commission and the first meeting may be held in September.

## II. -

The Siamese Government have experienced the greatest difficulties in getting the Penal Code translated into Siamese and having the translation revised. As a matter of fact, we did not quite ~~well~~ realize the difficulty until the ~~English~~<sup>was</sup> draft was fully completed. It ~~is~~<sup>was</sup> only then that the first Siamese text drawn by the Siamese members of the mixed Commission was more carefully examined and found to be inadequate. About six months were devoted to its revision and correction.

We must do our best to avoid the same difficulties



and delay in the <sup>work of the</sup> Civil and Commercial Codification, particularly for the Criminal Procedure Code and for the Code on Obligations. I propose therefore that the Siamese translation of these Codes be carried out and revised progressively, as we ~~shall~~ go on with the English text. The Code on Obligations may include from 1200 to 1500 sections. The Code of Criminal Procedure may include about 500 sections. It would be rather discouraging for the interpreters to get at one time such long texts to translate or even to revise. Whilst if they get say some 50 sections every week, they can easily make the translation little by little.

I think the translation ought to be entrusted to the Siamese members of the Commission. Having taken part in the discussion during the meetings, they <sup>will</sup> ~~shall~~ be in the best position to make clear the meaning of the English provisions. But I would like also their translation to be checked by a person not being a member of the Commission, in order to ascertain whether the text compiled by the Siamese members of the Commission is easily intelligible to persons who were not present at the meetings of the Commission.

Both the Siamese and the English texts could thus be ready <sup>at</sup> by the same time.

### III -

Besides the Civil and Commercial Code, the programme of the Codification includes:

The Code of Criminal Procedure.

The Code of Civil Procedure.

The Law of organization of Courts.

A considerable amount of work has been already done by Mr. Guyon in connection with the Criminal Procedure. Mr. Guyon has compiled a Draft Code in which the materials collected by him in Bangkok have

with the English text. The Code on Obligations may include from 1800 to 1850 sections. The Code of Criminal Procedure may include about 800 sections. It would be rather discouraging for the interpreters to get at one time such long texts to translate or even to revise. Whilst if they get say some 50 sections every week, they can easily make the translation little by little.

I think the translation ought to be entrusted to the Siamese members of the Commission. Having taken part in the discussion during the meetings, they <sup>will</sup> ~~shall~~ be in the best position to make clear the meaning of the English provisions. But I would like also their translation to be checked by a person not being a member of the Commission, in order to ascertain whether the text compiled by the Siamese members of the Commission is easily intelligible to persons who were not present at the meetings of the Commission.

Both the Siamese and the English texts could thus be ready <sup>at</sup> by the same time.

### III -

Besides the Civil and Commercial Code, the programme of the Codification includes: .

The Code of Criminal Procedure.

The Code of Civil Procedure. .

The Law of organization of Courts.

A considerable amount of work has been already done by Mr. Guyon in connection with the Criminal Procedure. Mr. Guyon has compiled a Draft Code in which the materials collected by him in Bangkok have been used, together with numerous extracts of the Indian, Japanese, Egyptian, French, German & Spanish Codes of Criminal Procedure. The draft is purposely made a very long one, extending over 789 sections.

I had instructed Mr. Guyon to include in it every possible point connected with Criminal Procedure, so that nothing could be overlooked when the time comes for discussion. He has therefore ~~drawn up a number of provisions~~ <sup>drawn up a number of</sup> provisions which are not essential and which may be shortened or omitted. When we shall revise it, I propose to cut down a large part of it and reduce it to the 3/4 or 3/5 of its present length.

But before undertaking such revision, the Commission would like a certain number of important points concerning Criminal Procedure to be examined and decided by the Government. I am now preparing a memorandum on these points, stating for each particular question what the present practice is, whether it seems to require alterations or not, and which kind of alterations could be proposed. I think I shall be able to submit that memorandum to the Ministry of Justice in August. Several other Ministerial Departments ~~will be~~ <sup>are</sup> concerned in the matter: The Ministry of the Interior, the Ministry of Local Government and even the Foreign Office. Presumably a meeting of Representatives of these various Ministries ~~will~~ <sup>will</sup> be necessary in order to come to an understanding.

After an understanding is reached on such preliminary points, the Draft Code shall be amended accordingly, revised, and then submitted for discussion to a mixed Commission including Siamese members.

If there was no pressure of time, I would like Messrs. Moncharville, Guyon, Rivière and L'Evesque to regularly sit as members in both mixed Commissions, viz. the Commission for the Criminal Procedure Code and ~~the Commission for the Code on Obligations~~. But I have calculated that should each Commission meet twice a week, Mr. Guyon would be obliged for several months to devote one third of his time to the Civil Law and Messrs. Mon-

Moncharville and Rivière one third of their time to the Criminal Procedure. I am afraid we cannot afford to do that; it would delay both the work on the Criminal Procedure and the work on the Civil Law.

On the other hand, it is essential that each member of the European staff should take a certain part in the preparation of the whole of the Codification. I have selected men having different trainings, viz. a Professor, a ~~Magistrate~~ <sup>Judge</sup> a Barrister, in order to have different points of view represented in the Commission. The work would not be satisfactory if the Professor would do alone part of it, and the Barrister another part of it, and so on. I propose therefore that the mixed Commission for the Code on Obligations ~~should not include only Messrs. Guyon & L'Esvesque, but I propose also that the final revision of each preliminary draft to be submitted to these Commissions be carried out by the whole of the European staff. Then Mr. Guyon~~ <sup>will</sup> ~~shall~~ participate in the present revision of the Draft Code on Obligations which ~~shall~~ <sup>will</sup> last about one month. On the other hand, Messrs. Moncharville & Rivière <sup>will</sup> ~~shall~~ participate in the revision of the draft Criminal Procedure Code which shall take place between the settlement of the preliminary points and the discussion by a mixed Commission.

#### IV. -

It is extremely difficult to exactly calculate how long the compilation of each separate part of the Codification shall last. The agreements made with the members of the Code Commission provide that they shall stay at least four years in the Government



Moncharville and Rivière one third of their time to the Criminal Procedure. I am afraid we cannot afford to do that; it would delay both the work on the Criminal Procedure and the work on the Civil Law.

On the other hand, it is essential that each member of the European staff should take a certain part in the preparation of the whole of the Codification. I have selected men having different trainings, viz. a Professor, a ~~Magistrate~~ <sup>Public Prosecutor</sup> a Barrister, in order to have different points of view represented in the Commission. The work would not be satisfactory if the Professor would do alone part of it, and the Barrister another part of it, and so on. I propose therefore that the mixed Commission for the Code on Obligations should not include only Messrs. Guyon & L'Évesque ~~and that the Commission for the Criminal Procedure should include Mr. Guyon~~ but I propose also that the final revision of each preliminary draft to be submitted to these Commissions be carried out by the whole of the European staff. Then Mr. Guyon <sup>will</sup> ~~shall~~ participate in the present revision of the Draft Code on Obligations which <sup>will</sup> ~~shall~~ last about one month. On the other hand, Messrs. Moncharville & Rivière <sup>will</sup> ~~shall~~ participate in the revision of the draft Criminal Procedure Code which shall take place between the settlement of the preliminary points and the discussion by a mixed Commission.

#### IV III -

It is extremely difficult to exactly calculate how long the compilation of each separate part of the Codification shall last. The agreements made with the members of the Code Commission provide that they shall stay at least four years in the Government



service and that, during the currency of their agreement they shall be entitled to 6 months leave. The most convenient thing for the Government would be not to allow the Members of the Commission to go on leave at different periods, but to let them go at the same time, say for instance from April to October 1911, and suspend the Codification during that time. If they should go on leave separately, the Commission would be obliged to go on with a reduced staff during 18 months or 3 years, which would be much more convenient.

• Then the future work of the Commission shall extend over two periods: a period of about 30 months from now to April 1911 and a period of say 2 years from October 1911 to the middle of 1913.

• If the Civil and Commercial Code was to be published as a whole in 1912 or 1913, I think we could during the first period (up to April 1911) have the Criminal Procedure Code ready for submission to His Majesty, and also have the part of the Civil Code concerning obligations entirely compiled.

But if the Government agree on my proposal, that is to say to publish first a separate <sup>Part</sup> ~~code~~ on Obligations, I am doubtful whether I can have such ~~code~~ <sup>Part</sup> also ready for signature during the first period. To have the Law on Obligations prepared as part of a general draft Civil & Commercial Code, or to have it prepared as a separate ~~code~~ <sup>code</sup> is not at all the same thing. First, the ~~code~~ <sup>Part</sup> on Obligations <sup>if published separately,</sup> must include several provisions which I intended to examine during the second period only (e. g: theory of Possession). Secondly, we shall be obliged to carry on separately a final revision of the ~~code~~ <sup>Part</sup> on Obligations by a higher Committee, whilst I originally thought that the final revision of the whole of the Civil Codifi-

ation, including Persons, Real Rights, Obligations & Inheritance would take place at the same time during the second period. I cannot therefore promise that both the Criminal Procedure Code and the Code on Obligations shall be ready for signature by April 1911. To say the truth, I am afraid one of them (very likely the Code on Obligations) shall not be ready at that time. The increase of work which shall unavoidably result from the division of the Civil & Commercial Code is precisely one of these unexpected difficulties which I was speaking of when I stated that the Codification would be ready in four years provided that nothing interferes. I wish to make the point as clear as possible to prevent any future misunderstanding.

Anyway, I still expect that if the Code on Obligations is not ready by April 1911 it may be ready by the <sup>beginning</sup> end of 1912 and that the whole Codification shall be finished during the currency of the year 1913, the second period being devoted to the completion of the last part of the Civil & Commercial Law and to the preparation of the Civil Procedure and Law of Organization of Courts.

#### IV. -

The compilation of the four Codes is not the only Legislative work to be presently undertaken. Since the Siamese Courts have taken jurisdiction over French and British subjects, and are likely to take jurisdiction over other foreign subjects, it becomes more and more urgent to provide for a certain amount of Legislation outside the Codes.

I. - Separate laws would be extremely useful to cover matters which were governed in the French and British Courts by the French or

English Law, and for which there is ~~presently~~ no Siamese statute. For instance the provisions of the English Merchandise marks act, 1887, and of the Patents Designs and Trade marks acts, 1883 to 1888, were applicable by the British Court for Siam. The provisions of the French Law on Trade marks and Patents were applicable by the French Consular Court. At present, the protection afforded to British, French and Siamese subjects by those foreign laws does not exist any more, since such Laws are not applicable by Siamese Courts.

Another instance is the matter of Expropriation for Public Purposes. So long as French and British subjects were under their respective Consular Courts and officials, it was possible to come to some understanding as to the taking of their land for public purposes. At present, this would be more difficult, because there is no Siamese Law on Expropriation. Besides, British subjects are now allowed to freely acquire land, so that the cases for expropriation of immoveable property belonging to them ~~shall~~ <sup>will</sup> become more frequent.

II. - Some other laws would be necessary in matters where Siamese subjects only were concerned till now, but where foreign subjects ~~shall~~ <sup>will</sup> be interested also in future. Several existing laws or regulations like the Customs regulations or the Excise law are not very well framed. They were accepted by the Legations in their English form <sup>may</sup> and subject to various restrictions or alterations. Now, the restrictions or alterations do not exist any more, the Siamese text alone becomes applicable, but when there shall be a case of applying such text ~~to~~ to foreigners and principally to British born subjects, no doubt the parties

and their ~~councils~~ <sup>will</sup> ~~can~~ discuss them thoroughly and they will take advantage of every possible weak point. I would advise the Government to revise them. The Law on Navigation also requires to be amended. Some further legislation on Arms and Ammunition, Explosives, Boilers on land, Registration of Births and Deaths, Storage of petroleum and dangerous goods, etc., has been under consideration for the last three or four years. Its enactment would considerably improve the present situation. *Quite recently, there has been a talk about the possibility of having in Bangkok a*

*Municipal Organization. Municipal Organization means promulgation of a Municipal Law and of numerous Municipal Regulations. The Siamese Government have often given to*

*the Legations understand that the existence of extra-territorial jurisdiction was a permanent obstacle to legislative and administrative improvements. May I suggest that it would not be advisable to let the Legations think that the argument was not effective and was only intended to facilitate negotiations about abolition of extra-territorial rights?*

VI. -

Every foreigner who has to deal with legal Siamese <sup>legal</sup> questions knows that it is extremely difficult to get reliable information about the existing Siamese statute law. Except for the laws collected in the two volumes published by H. K. H. Prince Rajburi, the in-



and their counsel <sup>will</sup> ~~can~~ discuss them thoroughly and they will take advantage of every possible weak point. I would advise the Government to revise them. The Law on Navigation also requires to be amended. Some further legislation on Arms and Ammunition, Explosives, Boilers on land, Registration of Births and Deaths, Storage of petroleum and dangerous goods, etc, has been under consideration for the last three or four years. Its enactment would considerably improve the present situation. *Quite recently, there has been talk* ~~The Siam Government have been~~

*about the possibility of having in Bangkok a Municipal Organization. Municipal Organization means promulgation of a Municipal Law and of numerous Municipal Regulations. The Siam Government have often given to*

~~the~~ understand that the existence of extra-territorial jurisdiction was a permanent obstacle to legislative <sup>and administrative</sup> improvements. May I suggest that it would not be advisable to let the Legations think that the argument was not effective and was only intended to facilitate negotiations about abolition of extra-territorial rights?

#### VI. -

Every foreigner who has to deal with ~~any~~ <sup>legal</sup> Siamese questions knows that it is extremely difficult to get reliable information about the existing Siamese statute law. Except for the laws collected in the two volumes published by H. R. H. Prince Rajburi, the investigations in order to get the text of a Siamese Law or Prakat are exceedingly hazardous. Very few Siamese lawyers have a full knowledge of the Siamese Law. From my personal practice as a Judge in the Bangkok Appeal Court I know that even in matters governed by rather modern texts, I never saw enacted during the last 15 years, it is most common to the ordinary Judge to give judgment without quoting the law or even making an allusion to its existence. As a striking instance, I may say that until recently I had no know-



ledge of the existence of the Criminal Breach of Contract Act of the year 117. I did not know of it when I prepared the provision of Section 335 n° 20 of the Penal Code, which I thought to be altogether a new provision in Siamese law. When the mixed commission examined the Bill, I pointed Section 335 n° 20 as being an innovation, and none of the Siamese members of the Commission ~~confirmed this statement~~ <sup>confirmed this statement</sup>. Later on, I was asked by the Ministry of Finance to prepare some legislation concerning ~~the~~ Labour Contracts. My work was <sup>done</sup> under the same ~~circumstances~~ <sup>very circumstances</sup>, and neither the Ministry of Finance nor any ~~other~~ persons who spoke about the matter ~~would~~ correct my error. It ~~was~~ only at the end of 1907 that I happened by mere chance to come across the text of the Law of the year 117, which I found in the Police Manual edited by Mr Lawson.

The Siamese Government has agreed that in any commercial cases where there is no Siamese Law or practice, the International Courts would be guided, so far as circumstances admit, by British statutes & cases. I venture to say that if nothing is done to improve the present situation, British statutes & cases ~~will~~ <sup>will</sup> be applied in a number of litigations where a Siamese Law or practice exists, simply because the Foreign Judge or Advisor, even being assisted by Siamese Judges, ~~shall~~ <sup>will</sup> not be informed of the existence of such Siamese practice or Law.

The best way to prevent such thing ~~from~~ <sup>from</sup> happening would be to collect and publish English translations of the Siamese statutes which are more likely to be applied in foreign cases, and also to collect and reprint the various laws which have already been published in English, but the copies of which are almost unobtainable at present. ~~As an instance, I may~~

quote the Opium laws, part of which have been published in English, the remainder being still untranslated. British subjects are likely to be prosecuted for offences against the Opium law, and the Opium law presently applicable to them is not such part only as was transformed by the British Legation into King's Regulations; it is the whole Siamese Opium law.

The same thing, in my opinion, should be made for the laws to be enacted in future. The Government has decided that the Codes ~~would~~ <sup>shall</sup> be published in English and French. It seems that any laws of ~~some~~ importance, particularly any laws applicable to foreign subjects, ought to be published in English also. There is no necessity of making the publication an official one, ~~not~~ <sup>not</sup> to officially certify the correctness of the English version. The Siamese text must be and remain the only official one. But it would be extremely convenient for all those who are not fully conversant with ~~the~~ legal Siamese (that is to say, for the great majority of the Foreign community) to get easily acquainted with the Siamese legislation. As a matter of fact, the practice already exists. Most of the recent enactments have been published in English by the local papers. What I propose is to make it a regular practice, to have the translations checked by reliable interpreters, and to print the various decrees in the same way, in the same size, with only one set of pages, so that they might be bound together at intervals, and tables of contents made with Index.

If the suggestion be adopted, I would propose that the ~~existing~~ texts be collected and translated (when no translation yet exists) by each competent Ministry, but that the arrangement, distribution and

printing be made under the control of the Code Commission, to secure proper uniformity. The publication might be made at periodical intervals. It might include, together with the laws, a summary of such judicial decisions as are likely to interest the whole community. It is not sufficient that the law itself be known. It is also necessary for the public to know how the law is construed and applied. For instance, the Dika Court has presently to decide on several cases involving construction of various sections of the Penal Code. A publication in English of the judgments given by the Dika in such cases would be extremely useful to the public. Besides, it would show to the foreign countries that the enactment of Codes is not considered by the Siamese Government merely as a way of getting rid of extraterritorial rights; <sup>but</sup> ~~and~~ that, on the contrary, the Codes are carefully applied by the Siamese Courts with the utmost desire of raising the judicial and legislative standard of the country to a high level.

## VII. -

Should the Siamese Government decide to undertake the legislative reforms described in N<sup>o</sup> V and VI, a large part of such work is bound to fall on the Code Commission.

First of all, it seems that it becomes now necessary that every draft law or regulation prepared by the various Ministries be communicated to the Commission before they be submitted to His Majesty, in order that the Commission might ascertain whether

there is anything in them which is inconsistent either with the Codes already promulgated, or with the general principles of the future Codification. I beg to make clear that I do not wish to interfere in any extent with the attributions of the separate Departments. But I think it would be very useful for those Departments themselves, when they are preparing new laws or regulations, to be warned of the possible results of the provisions which they propose to issue. For instance, the Penal Code contains a general system of Criminal Law. When penal provisions are inserted in a new law, it is essential that they be consistent with the system of the Penal Code. To take an example, the Penal Code provides for a long list of petty offences, and there is a peculiar system about liability, attempt, <sup>and accessories</sup> ~~and accessories~~ (in case of petty offences). Petty offences are punishable even if done unintentionally; an attempt to commit a petty offence is not punishable. Whilst ordinary offences are punishable only if done intentionally, and an attempt to commit an ~~ordinary~~ ordinary offence is punishable. Petty offences are divided into four classes: those of class A being punished with fine up to 12 Rupees, those of class B with fine up to 50 Rupees, those of class C with imprisonment up to 10 days or fine up to 50 Rupees, or both, those of class D with imprisonment up to one month or fine up to 100 Rupees or both. Now, petty offences <sup>include</sup> many breaches of Police Regulations. Now, suppose it be found advisable to make supplementary Police Regulations. The soundest system would be to make the breaches of the supplementary Regulations petty offences under the Penal Code, and distribute them in ~~distinct~~ <sup>A, B, C or D,</sup> classes according to their respective importance, in the same way as the other breaches of Police Regulations punished by the Penal Code. A few that would be far better than to punish them say with fine up to 200 Rupees or imprisonment



inserted in a new law, it is essential that they be consistent with the system of the Penal Code. To take an example, the Penal Code provides for a long list of petty offences, and there is a peculiar system about liability, attempt, ~~and accessories~~ <sup>and punishment</sup> (in case of petty offences). Petty offences are punishable even if done unintentionally; an attempt to commit a petty offence is not punishable. Whilst ordinary offences are, punishable only if done intentionally and an attempt to commit an ~~ordinary~~ ordinary offence is punishable. Petty offences are divided into four classes. Those of class A being punished with fine up to 12 Ticals. Those of class B with fine up to 50 Ticals. Those of class C with imprisonment up to 10 days or fine up to 50 Ticals or both. Those of class D with imprisonment up to one month or fine up to 100 Ticals or both. Now petty offences <sup>include</sup> many breaches of Police Regulations. ~~Now~~ Suppose it be found advisable to make supplementary Police Regulations. The soundest system would be to make the breaches of the supplementary Regulations petty offences under the Penal Code, and distribute them in ~~different~~ <sup>A, B, C or D,</sup> classes according to their respective importance, in the same way as the other breaches of Police Regulations punished by the Penal Code. A few. That would be far better than to punish them say with fine up to 200 Ticals or imprisonment not exceeding two months, because it would be uncertain whether these breaches are petty offences or ordinary offences, whether they are punishable or not when committed unintentionally, whether ~~an~~ an attempt to commit such breach is punishable or not. As another illustration I would say that a few weeks ago, the Ministry of Local Government asked for my opinion about draft Regulations concerning the taking of a census in Bangkok. There were in the draft penal provisions punishing those persons who ~~would~~ <sup>should</sup> refuse to answer the questions of the enumerators, or give false information, or obstruct the enumerators, etc. I pointed that penalties were already provided in the Penal Code for those ~~kind of~~ offences.



( see section 234 2° 1, 2 & 4 and sections 116 to 120 )  
and that the penal provisions could be removed from  
the draft.

If, such provisions be ~~not~~ taken we would be rapid-  
ly working under a number of different criminal systems,  
I mean different systems for liability, attempt, exte-  
nuating circumstances, recidive, etc. It would be con-  
fusing for the public as well as for the Courts. From

*the more logical point of view, there is no reason  
why two similar offences should be punished by law  
in different manners. Why should for instance the  
fact of obstructing an official be punished one  
way when the official belongs to a certain  
ministry and another way when the official belongs  
to another ministry or to another Department of the  
same ministry. There is no reason why the imprison-*

ment should be so much when the obstruction refers to  
the collection of taxes, and so much when the obstruc-  
tion refers to execution of Police Regulations, and  
so on. Besides, the Government are supposed to have  
carefully examined the system of the Penal Code when  
such Code was enacted, and to <sup>have</sup> considered it the most  
advisable to adopt. Why should they a short time after-  
wards put another system in force for such or such  
particular kind of offences? A similar argument <sup>will</sup> ~~may~~  
apply to the Civil and Commercial law. Rules for limi-  
tation of actions, prescription, liability for wrongful  
acts, damages, etc. etc. must be made as consistent  
as possible whether they are to be provided in the  
Codes or in separate laws. ~~There is no necessity~~ Dif-

ferent legal civil and commercial systems <sup>are not to</sup> ~~should~~ be put  
into force simultaneously. Simplicity and uniformity

are the best guarantee that <sup>a</sup> legal system shall be  
worked out easily by the Siamese Courts. The Siamese  
Judge <sup>will</sup> ~~shall~~ have a very <sup>difficult task to perform</sup> ~~hard work to do~~ during the next

*few years. We must facilitate his ~~work~~ task by avoiding  
complications and inconsistencies as <sup>much</sup> as we can.*

The control for the uniformity of legislation <sup>will</sup> involve an appreciable amount of work for the Legislative service. Presumably, the cooperation of the Legislative Adviser shall also be required for the revision of some existing laws or the preparation of new laws or Regulations. Up to now, I have contributed to the amendment <sup>of</sup> ~~revision~~ of the Customs Regulations, <sup>of</sup> the Navigation law, ~~etc.~~ <sup>of</sup> Draft acts on Arms and Ammunition. Registration of Births and Deaths, ~~etc.~~ <sup>etc.</sup> ~~was sent to the Legislative Service.~~ In other matters (Labour Contracts Act, Petroleum Act, etc.) I had to prepare full drafts. The recent legislation about Military and Naval Justice, too, has been mostly drawn by the Legislative Adviser. It is quite natural that the same be done in future and that whenever a law of general importance is being prepared, the Legislative Service should be entrusted either with its compilation or at least with its revision, since it is the best way to secure proper harmony between the different parts of the Legislative and administrative reforms.

But it is a question <sup>shall be able to</sup> whether I ~~might~~ <sup>shall be able to</sup> secure a complete and rapid execution <sup>of</sup> such additional work with the present staff of the Legislative Service. I wish again to make clear that the present composition of the Code Commission was decided in February 1908, that the negotiations for the English Treaty were not much advanced at that time, & that the only thing I could then anticipate was the compilation of the Codes referred in the Japanese and French treaties. At present, the situation is different. The Siamese Government certainly realize that since they have taken jurisdiction over a large part of the foreign community, including Europeans, they are morally bound to execute such improvements as may be expected from a Power which has decided to run its adminis-



**ต้นฉบับไม่มีหน้านี้**

**NO THIS PAGE IN ORIGINAL**

July 20th, 1909.

MEMORANDUM. -

I. -

The fourth member of the Code Commission, Mr. Rivière, having arrived in Bangkok, I have at once convened the Commission in order to examine how the work of Codification could be now carried on.

Since the British Treaty is at present in force, I understand that the Siamese Government desire to have the whole of the Codification completed as soon as possible, and that they would also like to publish separately and within the shortest period consistent with the nature of the work such parts of the Codification as shall govern the majority of cases in which foreigners are concerned.

It is a most desirable thing that the transitory period between the ratification of the Treaty and the completion of the Codification should not last too many years. It is desirable because on the completion of the Codification the full jurisdiction over the foreigners concerned in such treaties will be transferred to the ordinary Siamese Courts. It is desirable also because during such transitory period there will be some uncertainty as to the proper law to be applied in a number of foreign cases, and in the absence of any definite Siamese law or practice a case-law mostly based on foreign precedents may be created, which might eventually conflict with

the principles adopted in the future codes and interfere to a certain extent with the publication of these codes.

With regard to the completion of the codification, I cannot say anything more than what I have stated in my previous reports. Judging from that part of the work which has already been done, I confidently expect that the whole work entrusted to the Commission shall be finished in four years, say during the currency of the year 1913. Provided, of course, that nothing interferes: I mean, that none of the members of the Code Commission shall be unable to carry on his duties, that the discussion, translation or revision of the various drafts shall not be delayed owing to circumstances not under our control, that unexpected difficulties shall not arise, that more elaborate drafts than at present contemplated shall not be required in matters, like commerce by sea, for which I propose to make only short summary provisions. I would like to impress upon the Government the idea that the present staff of the Code Commission is sufficient to execute the work within the specified time, but nothing more. Whatever activity may be displayed by my assistants and myself, the Government cannot expect the codification to be ended before 1913. As a comparison, I may state that when I took over the compilation of the Penal Code, a large amount of work had already been done. Yet I began looking at the matter in February 1903 and the Code was not enacted until the 1st of June 1908. It took more than three years to get it passed. Now the Penal Code consists of 340 Sections, whilst the rest of the codification



may easily include more than 3500 Sections.

With regard to the second point, the parts of the Codification in which foreign cases are likely to be most concerned are the following:-

Criminal Law,

Law on Contracts,

Law on landed property.

The new Penal Code being applicable in the International Courts, the question is settled so far as the Criminal Law is concerned.

The Siamese Law on land is peculiar to this country. The new members of the Code Commission are not likely to understand it until they have been in Siam for a year or two. They could not undertake its Codification just now. My intention is therefore to leave it to be examined with the Siamese Law concerning family and inheritance, which is to be codified last of all. The delay does not matter very much. The Law is so peculiar that it is almost impossible to introduce in it foreign elements by way of case-law.

The most urgently needed part of the Codification is the Law on Contracts. It is earnestly required for the settlement of Siamese Cases as well as for the settlement of foreign cases. That is why we took it over first of all. A large part of the work has already been done in Paris by the Commission. Not only the Law on Contracts was examined but also questions concerning Wrongful Acts (or Torts) and Unjust Enrichment, that is to say the whole of the matter which is known as "the Law on Obligations" in the modern Codes.

The Siamese Codification as described in the French and Japanese Treaties includes a Civil and

Commercial Code. The Law on Obligations would constitute an important part of such a Code. The Commission has already proposed to the Ministry of Justice to adopt, for the Civil and Commercial Code, the following main divisions:

Preliminary. - General Provisions.

Book I. - Persons.

Division I. - Natural Persons (Nationality, Capacity, Marriage, Divorce, Guardianship).

Division II. - Juridical Persons (Corporations, Public bodies, Associations, Companies, Foundations).

Book II. - Real Rights.

Division I. - Object of real Rights (Moveable property, Immoveable property, Literary, artistic and industrial property).

Division II. - Possession.

Division III. - Ownership.

Division IV. - Servitudes or easements.

Book III. - Obligations

Division I. - General Rules.

Division II. - Specific Contracts (Sale, Hire, Loan, Deposit, Agency, Pledge, Negotiable Instruments, etc..)

Book IV. - Inheritance and Wills.

Book V. - Provisions of Private International Law.

Even should those main divisions be slightly altered, the Book III "Obligations" will certainly constitute about half of the whole Code. It is therefore a most important piece of work.

As to how the Codification of the Civil and Commercial Law, including Obligations, could be conducted

I have submitted a scheme to the Government in February 1908. I explained then that the Civil and Commercial Law could be made in two ways, either by compiling first a Code on Obligations and afterwards a Code on Family, Property and Inheritance, thus dividing the matter into two Codes, or by publishing the whole of the matter at one and the same time as a Civil and Commercial Code. The second method is the best from the legal point of view. The different parts of the Civil and Commercial Law are closely connected. Rules adopted in matters of Family or Property have an influence on the rules to be adopted in matters of Obligations, and vice versa. The rules of Prescription and Limitation apply to actions arising out of Property or Inheritance as well as to actions arising out of Contracts. The rules concerning Possession, which are part of the Law on Property, are frequently applied in cases concerning Contracts. It is therefore much safer not to promulgate a portion of the Civil and Commercial Law before the other portions have been thoroughly examined. A Civil and Commercial Code compiled and published as a whole is less likely to show gaps or want of harmony.

On the other hand I can quite understand that the Siamese Government might like to have the Law on Obligations enacted first and not to wait for it till the whole Civil and Commercial Code is published, that is to say till the year 1912 or 1913.

Therefore, after having consulted with Messrs. Moncharville, Guyon and Rivière, I beg to submit to the Siamese Government the following proposal, which is likely to meet both sides of the question.

The Code Commission would presently devote the whole of its time to the completion of a Draft on

Obligations, including in it not only Book III of the Civil and Commercial Code, but also such parts of the Preliminary and of Book II (Property) as may be deemed necessary to annex to it. This draft might be published with the following title:

Civil and Commercial Code.

Obligations.

After the enactment of the part concerning Obligations the Commission would take over the Law on Family, Property and Inheritance. But instead of publishing it as a second separate Code, we would amalgamate it with the part on Obligations already enacted and issue the whole as a Civil and Commercial Code. The several Divisions or Titles of the Part on Obligations would be put in such place as originally assigned to them in the draft scheme of Civil & Commercial Code referred above. The main part would become Book III of the Civil & Commercial Code. The part concerning Possession will be embodied in Division II of Book II, and so on. Meanwhile, such provisions relating to Obligations as may be found not to be consistent enough with the newly drawn provisions would be amended, and also such Sections as the practice in Court may show to require alteration. The whole will then constitute the Siamese Civil and Commercial Code and would be published as such.

It is not necessary of course that the Siamese Government should publicly disclose their intention to issue the Part concerning Obligations as a temporary measure only, and to embody it later on in a more comprehensive Civil & Commercial Code. It will be quite sufficient to state that the Government has decided to publish first the part of the Civil and Commercial Law which concerns contracts, because it



is the most urgently required, the rest of the civil and commercial law to be codified afterwards.

If the Government agree to take that course, we shall at once try to complete the Draft concerning Obligations. A revision of the text framed in Paris is now going on. So far as the 120 Sections concerning General Provisions are concerned, the revision will be finished by the middle or the end of August, and those sections will be ready for submission to a Commission including Siamese members. That Commission may therefore be appointed now. I think it is understood that it shall be composed of the European staff of the Code Commission, and three Siamese Judges, under the Presidency of the Minister of Justice. The Commission shall be a "Commission for the compilation of a Code on Obligations". Assuming that the revised text prepared by us be ready by the middle of August, it may be distributed at once to the Members of the Commission and the first meeting may be held in September.

## II. -

The Siamese Government have experienced the greatest difficulties in getting the Penal Code translated into Siamese and having the translation revised. As a matter of fact, we did not quite realize the difficulty until the English draft was fully completed. It was only then that the first Siamese text drawn by the Siamese members of the mixed Commission was more carefully examined and found to be inadequate. About six months were devoted to its revision and correction.

We must do our best to avoid the same difficulties.



and delay in the rest of the Codification, particularly for the Criminal Procedure Code and for the Code on Obligations. I propose therefore that the Siamese translation of these Codes be carried out and revised progressively, as we go on with the English text. The Code on Obligations may include from 1200 to 1500 Sections. The Code of Criminal Procedure may include about 500 Sections. It would be rather discouraging for the interpreters to get at one time such long texts to translate or even to revise. Whilst if they get say some 50 Sections every week, they can easily make the translation little by little.

I think the translation ought to be entrusted to the Siamese members of the Commission. Having taken part in the discussion during the meetings, they will be in the best position to make clear the meaning of the English provisions. But I would like also their translation to be checked by a person not being a member of the Commission, in order to ascertain whether the text compiled by the Siamese members of the Commission is easily intelligible to persons who were not present at the meetings of the Commission.

Both the Siamese and the English texts could thus be ready at the same time.

### III. -

Besides the Civil and Commercial Code, the programme of the Codification includes:

The Code of Criminal Procedure.

The Code of Civil Procedure.

The Law of organization of Courts.

A considerable amount of work has already been done by Mr. Guyon in connection with the Criminal Procedure. Mr. Guyon has compiled a Draft Code in which the materials collected by him in Bangkok have been used, together with numerous extracts of the Indian, Japanese, Egyptian, French, German & Spanish Codes of Criminal Procedure. The draft is purposely made a very long one, extending over 720 sections. I had instructed Mr. Guyon to include in it every possible point connected with Criminal Procedure, so that nothing could be overlooked when the time comes for discussion. He has therefore drawn up a number of provisions which are not essential and which may be shortened or omitted. When we shall revise it, I propose to cut down a large part of it and reduce it to the 3/4 or 3/5 of its present length.

But before undertaking such revision, the Commission would like a certain number of important points concerning Criminal Procedure to be examined and decided by the Government. I am now preparing a memorandum on those points, stating for each particular question what the present practice is, whether it seems to require alteration or not, and which kind of alterations could be proposed. I think I shall be able to submit that memorandum to the Ministry of Justice in August. Several other Ministerial Departments are concerned in the matter: The Ministry of the Interior, the Ministry of Local Government and even the Foreign Office. Presumably a meeting of Representatives of these various Ministries will be necessary in order to come to an understanding.

After an understanding is reached on such preliminary points, the Draft Code shall be amended accord-

dingly, revised, and then submitted for discussion to a mixed Commission including Siamese members.

If there was no pressure of time, I would like Messrs. Moncharville, Guyon, Rivière and L'Evesque to regularly sit as members in both mixed Commissions, viz. the Commission for the Criminal Procedure Code and the Commission for the Code on Obligations. But I have calculated that should each Commission meet twice a week, Mr. Guyon would be obliged for several months to devote one third of his time to the Civil Law and Messrs. Moncharville and Rivière one third of their time to the Criminal Procedure. I am afraid we cannot afford to do that; it would delay both the work on the Criminal Procedure and the work on the Civil Law.

On the other hand, it is essential that each member of the European staff should take a certain part in the preparation of the whole of the Codification. I have selected men having different trainings, viz. a Professor, a Public Prosecutor & a Barrister, in order to have different points of view represented in the Commission. The work would not be satisfactory if the Professor would do alone part of it, and the Barrister another part of it, and so on. I propose therefore that the mixed Commission for the Code on Obligations should not include Mr. Guyon and that the Commission for the Criminal Procedure should include only Messrs. Guyon and L'Evesque, but I propose also that the final revision of each preliminary draft to be submitted to these Commissions be carried out by the whole of the European staff. Then Mr. Guyon will participate in the present revision of the Draft Code on Obligations which will last about one month. On the other hand, Messrs. Moncharville & Rivière will parti-



cipate in the revision of the Draft Criminal Procedure Code which shall take place between the settlement of the preliminary points and the discussion by a mixed Commission.

#### IV.

It is extremely difficult to calculate exactly how long the compilation of each separate part of the Codification shall last. The agreements made with the members of the Code Commission provide that they shall stay at least four years in the Government service and that, during the currency of their agreement they shall be entitled to 6 months leave. The most convenient thing for the Government would be not to allow the Members of the Commission to go on leave at different periods, but to let them go at the same time, say for instance from April to October 1911, and suspend the Codification during that time. If they should go on leave separately, the Commission would be obliged to go on with a reduced staff during 18 months or 2 years, which would be much inconvenient.

Then the future work of the Commission shall extend over two periods: a period of about 30 months from now to April 1911 and a period of say 3 years from October 1911 to the middle of 1913.

If the Civil and Commercial Code was to be published as a whole in 1912 or 1913, I think we could during the first period (up to April 1911) have the Criminal Procedure Code ready for submission to His Majesty, and also have the part of the Civil Code concerning obligations entirely compiled.

But if the Government agree on my proposal, that

is to say to publish first a separate Part on Obligations, I am doubtful whether I can have such Part also ready for signature during the first period. To have the Law on Obligations prepared as part of a general draft Civil & Commercial Code, or to have it prepared as a separate Code is not at all the same thing. First, the Part on Obligations if published separately must include several provisions which I intended to examine during the second period only (e. g: theory of Possession). Secondly, we shall be obliged to carry on separately a final revision of the Part on Obligations by a Higher Committee, whilst I originally thought that the final revision of the whole of the Civil Codification, including Persons, Real Rights, Obligations & Inheritance would take place at the same time during the second period. I cannot therefore promise that both the Criminal Procedure Code and the Code on Obligations shall be ready for signature by April 1911. To say the truth, I am afraid one of them (very likely the Code on Obligations) shall not be ready at that time. The increase of work which shall unavoidably result from the division of the Civil & Commercial Code is precisely one of these unexpected difficulties which I was speaking of when I stated that the Codification would be ready in four years provided that nothing interferes. I wish to make the point as clear as possible to prevent any future misunderstanding.

Anyway, I still expect that if the Code on Obligations is not ready by April 1911 it may be ready by the beginning of 1912 and that the whole Codification shall be finished during the currency of the year



1913, the second period being devoted to the compilation of the last part of the Civil & Commercial Law and to the preparation of the Civil Procedure and Law of Organisation of Courts.

v. -

The compilation of the four Codes is not the only Legislative work to be presently undertaken. Since the Siamese Courts have taken jurisdiction over French and British subjects, and are likely to take jurisdiction over other foreign subjects, it becomes more and more urgent to provide for a certain amount of Legislation outside the Codes.

I. - Separate laws would be extremely useful to cover matters which were governed in the French and British Courts by the French or English Law, and for which there is at present no Siamese statute. For instance the provisions of the English Merchandise marks act, 1867, and of the Patents Designs and Trade marks acts, 1883 to 1888, were applicable by the British Court for Siam. The provisions of the French Law on Trade marks and Patents were applicable by the French Consular Court. At present, the protection afforded to British, French and Siamese subjects by those foreign laws does not exist any more, since such Laws are not applicable by Siamese Courts.

Another instance is the matter of Expropriation for Public Purposes. So long as French and British subjects were under their respective Consular Courts and officials, it was possible to come to some understanding as to the taking of their land for public purposes. At present, this would be more difficult,

because there is no Siamese Law on Expropriation. Besides, British subjects are not allowed to freely acquire land, so that the cases for expropriation of immoveable property belonging to them will become more frequent.

II. - Some other laws would be necessary in matters where Siamese subjects only were concerned till now, but where foreign subjects will be interested also in future. Several existing laws or regulations like the Customs regulations or the Excise law are not very well framed. They were accepted by the Legations in their English form only and subject to various restrictions or alterations. Now, the restrictions or alterations do not exist any more, the Siamese text alone becomes applicable, but when there shall be a case of applying such text to foreigners and principally to British born subjects, no doubt the parties and their counsel will discuss them thoroughly and they will take advantage of every possible weak point. I would advise the Government to revise them. The Law on Navigation also requires to be amended. Some further legislation on Arms and Ammunition, Explosives, Boilers on land, Registration of Births and Deaths, Storage of petroleum and dangerous goods, etc, has been under consideration for the last three or four years. Its enactment would considerably improve the present situation. Quite recently, there has been a talk about the possibility of having in Bangkok a Municipal Organisation. Municipal Organization means promulgation of a Municipal Law and of numerous Municipal Regulations. The Siamese Government have often given to understand that the existence of extraterritorial jurisdiction was a permanent obstacle to legislative and administrative improvements. May I suggest

that it would not be advisable to let the Legations think that the argument was not effective and was only intended to facilitate negotiations about abolition of extraterritorial rights?

## VI. -

Every foreigner who has to deal with Siamese legal questions knows that it is extremely difficult to get reliable information about the existing Siamese statute law. Except for the laws collected in the two volumes published by H. R. R. Prince Rajburi, the investigations in order to get the text of a Siamese Law or Prahat are exceedingly hazardous. Very few Siamese lawyers have a full knowledge of the Siamese Law. From my personal practice as a Judge in the Bangkok Appeal Court I know that even in matters governed by rather modern texts, I mean laws enacted during the last 15 years, it is most common to the ordinary Judge to give judgment without quoting the law or even making an allusion to its existence. As a striking instance, I may say that until recently I had no knowledge of the existence of the "Criminal Breach of Contract Act" of the year 117. I did not know of it when I prepared the provision of section 335 n° 20 of the Penal Code, which I thought to be altogether a new provision in Siamese Law. When the Mixed Commission examined my draft, I pointed to Section 335 n° 20 as being an innovation, and none of the Siamese members of the Commission contradicted this statement. Later on, I was asked by the Ministry of Finance to prepare some legislation concerning Labour Contracts. My work was done under the same wrong impression, and neither

the Ministry of Finance nor any persons to whom I spoke about the matter corrected my error. It was only at the end of 1907 that I happened by mere chance to come across the text of the Law of the year 1117, which I found in the Police Manual edited by Mr. Lawson.

The Siamese Government has agreed that in any commercial cases where there is no Siamese Law or practice, the International Courts would be guided, so far as circumstances admit, by British statutes & cases. I venture to say that if nothing is done to improve the present situation, British statutes & cases will be applied in a number of litigations where a Siamese Law or practice exists, simply because the Foreign Judge or Adviser, even being assisted by Siamese Judges, will not be informed of the existence of such Siamese practice or Law.

The best way to prevent such thing from happening would be to collect and publish English translations of the Siamese statutes which are more likely to be applied in foreign cases, and also to collect and reprint the various laws which have already been published in English, but the copies of which are almost unobtainable at present.

The same thing, in my opinion, should be made for the Laws to be enacted in future. The Government has decided that the Codes shall be published in English and French. It seems that any Laws applicable to foreign subjects, ought to be published in English also. There is no necessity of making the publication an official one, not to officially certify the correctness of the English version. The Siamese text must be and remain the only official one. But it would be extremely convenient for all those who are not fully



convenient with legal Siamese (that is to say, for the great majority of the Foreign community) to get easily acquainted with the Siamese legislation. As a matter of fact, the practice already exists. Most of the recent enactments have been published in English by the local papers. What I propose is to make it a regular practice, to have the translations checked by reliable interpreters, and to print the various decrees in the same way, in the same size, with only one set of pages, so that they might be bound together at intervals, and tables of contents made with Index.

If the suggestion be adopted, I would propose that the texts be collected and translated (when no translation yet exists) by each competent Ministry, but that the arrangement, distribution and printing be made under the control of the Code Commission, to secure proper uniformity. The publication might be made at periodical intervals. It might include, together with the laws, a summary of such judicial decisions as are likely to interest the whole community. It is not sufficient that the law itself be known. It is also necessary for the public to know how the law is construed and applied. For instance, the Dika Court has presently to decide on several cases involving construction of various sections of the Penal Code. A publication in English of the judgments given by the Dika in such cases would be extremely useful to the public. Besides, it would show to the foreign countries that the enactment of Codes is not considered by the Siamese Government merely as a way of getting rid of extraterritorial rights, but that, on the contrary, the Codes are carefully applied by the Siamese Courts with the utmost desire of raising the judicial and legislative standard of the country to a high level.



## VII.

Should the Siamese Government decide to undertake the legislative reforms described in Nos. V and VI, a large part of such work is bound to fall on the Code Commission.

First of all, it seems that it becomes now necessary that every draft law or regulation prepared by the various Ministries be communicated to the Commission before they be submitted to His Majesty, in order that the Commission might ascertain whether there is anything in them which is inconsistent either with the Codes already promulgated, or with the general principles of the future codification. I beg to make clear that I do not wish to interfere to any extent with the attributions of the separate Departments. But I think it would be very useful for these Departments themselves, when they are preparing new laws or regulations, to be warned of the possible results of the provisions which they propose to issue. For instance, the Penal Code contains a general system of Criminal Law. When Penal provisions are inserted in a new law, it is essential that they be consistent with the system of the Penal Code. To take an example, the Penal Code provides for a long list of petty offences, and there is a peculiar system about liability, attempt, accessories and punishments in case of petty offences. Petty offences are punishable even if done unintentionally; an attempt to commit a petty offence is not punishable. Whilst ordinary offences are punishable only if done intentionally, and a attempt to commit an ordinary offence is

punishable. Petty offences are divided into four classes, those of class A being punished with fine up to 25 Ticals, those of class B with fine up to 50 Ticals, those of class C with imprisonment up to 10 days or fine up to 50 Ticals, or both, those of class D with imprisonment up to one month or fine up to 100 Ticals or both. Now, petty offences include many breaches of Police Regulations. Suppose it be found advisable to make supplementary Police Regulations. The soundest system would be to make the breaches of the supplementary Regulations petty offences under the Penal Code, and distribute them in classes A, B, C or D according to their respective importance, in the same way as the other breaches of Police Regulations punished by the Penal Code. That would be far better than to punish them say with fine up to 250 Ticals or imprisonment not exceeding two months, because it would be uncertain whether these breaches are petty offences or ordinary offences, whether they are punishable or not when committed unintentionally, whether an attempt to commit such breach is punishable or not. As another illustration I would say that a few weeks ago, the Ministry of Local Government asked for my opinion about draft Regulations concerning the taking of a census in Bangkok. There were in the draft penal provisions punishing those persons who should refuse to answer the questions of the enumerators, or give false information, or obstruct the enumerators, etc. I pointed that penalties were already provided in the Penal Code for those offences (see Section 334 n°1, 3 & 4 and Sections 110 to 120) and that the penal provisions could be removed from the draft.

If no such precautions be taken we would be

rapidly working under a number of different original systems, I mean different systems for liability, attempt, extenuating circumstances, recidive, etc. It would be confusing for the public as well as for the Courts. From the mere logical point of view, there is no reason why two similar offences should be punished by law in different manners. Why should for instance the fact of obstructing an official be punished one way when the official belongs to a certain ministry and another way when the official belongs to another ministry or to another Department of the same Ministry. There is no reason why the imprisonment should be so much when the obstruction refers to the collection of taxes, so much when the obstruction refers to execution of Police Regulations, and so on. Besides, the Government are supposed to have carefully examined the system of the Penal Code when such Code was enacted, and to have considered it the most advisable to adopt. Why should they a short time afterwards put other systems in force for such or such particular kind of offences? A similar argument will apply to the Civil and Commercial law. Rules for limitation of actions, possession, liability for wrongful acts, damages, etc. etc. must be made as consistent as possible whether they are to be provided in the Codes or in separate laws. Different legal civil and commercial systems are not to be put into force simultaneously. Simplicity and uniformity are the best guarantee that a legal system shall be worked out easily by the Siamese Courts. The Siamese Judge will have a very difficult task to perform during the next few years. We must facilitate his task by avoiding complications and inconsistencies as much as we can.

The control for the uniformity of legislation will involve an appreciable amount of work for the Legislative Service. Presumably, the cooperation of the Legislative Adviser shall also be required for the revision of some existing Laws or the preparation of new Laws or Regulations. Up to now, I have contributed to the amendment or revision of the Customs Regulations, of the Navigation Law, of draft acts on Arms and Ammunition, Registration of Births and Deaths, etc. In other matters (Labour Contracts Act, Petroleum Act, etc.) I had to prepare full drafts. The recent legislation about Military and Naval Justice, too, has been mostly drawn by the Legislative Adviser. It is quite natural that the same be done in future and that whenever a law of general importance is being prepared, the Legislative Service should be entrusted either with its compilation or at least with its revision, since it is the best way to secure proper harmony between the different parts of the legislative and administrative reforms.

But it is a question whether I shall be able to secure a complete and rapid execution of such additional work with the present staff of the Legislative Service. I wish again to make clear that the present composition of the Code Commission was decided in February 1908, that the negotiations for the English Treaty were not much advanced at that time, & that the only thing I could then anticipate was the compilation of the Codes referred in the Japanese and French Treaties. At present, the situation is different. The Siamese Government certainly realize that since they have taken jurisdiction over a large part of the foreign community, including Europeans, they are morally bound to execute such



improvements as may be expected from a Power which has decided to run its administration on advanced modern lines. Therefore, if the Siamese Government would like to be sure that the Code on Obligations and the Code of Criminal Procedure shall be ready for promulgation on the beginning of 1911; if they would like to have the necessary amount of legislation outside the Codes prepared or revised as soon as possible; if they agree also with my proposal to reprint English texts of the existing Laws, and to publish periodically in English the new Laws and Regulations, together with summaries of case-law, I think it would be advisable to engage one more man as a member of the Code Commission and perhaps to take one of the young advisers as an assistant secretary. Then I could guarantee that the full programme of Codification and other Legislation described in this memorandum shall be carried out within the above mentioned time.



Bangkok, August 24th 1909.

MEMORANDUM.

With reference to my memorandum of the 20th of July, I beg to inform the Minister of Justice that the revision of the General Provisions concerning Obligations is now completed. A very large number of alterations and suppressions were made, with the result that the draft is about 50 sections shorter and looks clearer.

In the meantime, the Commission has prepared illustrations for a great many sections, in order to enable the reader to catch more easily the true meaning and scope of these sections.

The amended draft shall be printed in several copies with the duplicator. I would like to be allowed to use for the printing Mr. Richer and Mr. Bègue, who know how to work the duplicator. The copies may be ready for distribution in about ten days.

It is time therefore that the COMMISSION FOR THE COMPILATION OF A CODE ON OBLIGATIONS be appointed. I mean the complete Commission placed under the Presidency of the Minister of Justice, or any other high Official appointed by the Government, and including Siamese Judges or Lawyers together with the European staff of the Code Commission.

AMERICAN LEGATION,  
BANGKOK, SIAM

Niss. No.-156-

August 28, 1909.

M. George Padoux,  
Legislative Adviser,  
Ministry of Justice,  
Bangkok.

Dear Mr. Padoux:-

Will you kindly let me know just what condition the law on -"The Right of Eminent Domain"- has reached in the work of codifying Siam's Laws as yet?

I had a talk some time ago with Mr. Westengard on this matter and he said it was under consideration by the Commission.

Will you also let me know whether forced or so-called corvey labor is in any way recognized by the laws either favorably or adversely please?

Any information on these points will be treated in confidence if so desired.

Yours Respectfully,

*Hamilton King*



AUGUST 30th. 1909.

Dear Mr. King,

The law on "the Right of Eminent Domain" is part of the Law on Land the codification of which is not yet under consideration. The Code Commission is presently engaged in codifying the Law on obligations and Contracts. It is improbable that the work on the Law on Land shall commence before 1911.

As to "Corvey labour", I understand that the matter is governed by special regulations in the Ministry of the Interior. Corvey is organized in Siam as it is in several other countries, every able-bodied man being bound to contribute a definite number of days per year to the public works in his district, and also to help in transporting Government officials or material whenever necessary at such salary as provided by Government tariff.

Believe me, dear Mr. King,

Most respectfully yours.

AMERICAN LEGATION,  
BANGKOK, SIAM.

Disc. No. 160.

September 1, 1909.

Monsieur G. Padoux,  
Bangkok.

Sir:-

Permit me to thank you sincerely for your  
kind reply of August 31, to my inquiry of the  
day previous.

Yours Sincerely,

*Frederick King*

September 2nd 1909.

Dear Prince

With reference to our conversation of Saturday about the composition of the Code Commission, I beg to submit the following remark.

The Code on Obligations is to go through three successive stages:

1st stage. - Compilation of a preliminary draft by the European Staff.

2nd stage. - The preliminary draft is submitted to a Commission including Siamese and European members. Every section of the preliminary draft is examined and discussed. New sections are framed as necessary. The work is carried out with a view of embodying in the draft as much as possible of Siamese Law or practice, and meeting the particular wants of the country.

3rd stage. - The draft compiled by the Commission is submitted to a Higher Committee, consisting of Members of the Government. The Higher Committee shall not be bound to consider every legal or technical questions connected with the Code, but only the political or Governmental questions. The Higher Committee shall do what a Parliament would do in a parliamentary country. For instance, the draft German Civil Code was prepared by a Commission of legal men, professors, judges, lawyers, etc., just the same as the Commission under which the Siamese draft shall pass through the 2nd stage. When the draft was discussed in the Reichstag, the purely legal questions were left aside. The deliberation centred on about fifteen points.



connected with political or social questions, such as civil personality of associations, liability for damages caused by animals, civil marriage, parental power, etc.

I suppose therefore that the draft Code compiled by the Commission be submitted to a Higher Committee with a memorandum showing the political or social side of the main provisions, and that those provisions only be discussed. The other provisions shall not be examined, unless a point is raised about any of them by one of the members of the Higher Committee. It is the only way to go safely and rapidly through the third stage. If the draft were to be discussed at full length, the Higher Committee would not revise more than 20 sections a week, with the result that the revision might last one year or more. Besides, I suppose that most of the members of the Higher Committee would not like to waste their time in going into the details of purely legal matters; they would rather leave these technical points to the technical men in the Code Commission. One may anticipate therefore that the discussion in the Higher Committee shall be limited say to one section out of fifty.

Prince Rajburi is at present the best Siamese legal man. No other person in Bangkok has such a complete knowledge of Siamese Law, combined with knowledge of European Laws and legal methods. His assistance for compiling the Code would be invaluable. But if his contribution is limited to the discussion in the Higher Committee, he will practically have no opportunity to give his opinion about the legal points and details of the Code. He will only discuss what I call the Governmental points, that is to say about

30 sections out of 1000. The remaining 970 sections shall not be examined by him. He will take part in the compilation of the Code only as a member of the Government, not as a legal man.

Is it not unfortunate that the bulk of the Civil Codification should be made without the assistance of the best Siamese legal man?

I can quite understand that Prince Rabi might be desirous not to permit himself in the Code Commission so as to weaken his subsequent position as a member of the Higher Committee. But it seems to me that when giving an opinion as a legal man on a question which is considered merely from the legal point of view, one is not prevented from giving afterwards different opinion on the same question as a member of the Government. Moreover, it seems it possible for the Prince to reserve his opinion whenever a question comes in the Code Commission on which he thinks that the Government might take a different view from his own view as a legal man.

I think therefore I must insist on the point that if Prince Rajburi does not take part in the work of the Commission there shall be very little opportunity for the Siamese Government and particularly for the Codificate service, to take advantage of the extensive legal knowledge and experience of the present Minister of Justice.

CIVIL CODE.

PRELIMINARY. - GENERAL PROVISIONS.

LAW : <sup>Mandatory</sup> Its ~~Compulsory~~ effect of Law.

Every kind of agreements are permitted, unless contrary to law or to public policy.

Law has no retroactive effect.

<sup>Rule for</sup> (Promulgation of Law, ~~and its~~  
Time when a law comes into force.

~~GENERAL PRINCIPLES OF INTERPRETATION~~

GENERAL PRINCIPLES FOR APPLICATION OR CONSTRUCTION OF LAWS.

BOOK I. PERSONS.

DIVISION I. - NATURAL PERSONS.

TITLE I. - Personal status.

Chapter I. Nationality.

Chapter II. Capacity for exercising civil rights.

TITLE II. - Family.

Chapter I. Marriage.

Chapter II. Divorce.

Chapter III. Guardianship.

DIVISION II. - JURISTIC PERSONS.

TITLE I. Public <sup>(corporations or public bodies with corporate rights)</sup> persons (Government, Ministries, Municipalities) Nature and extent of their civil capacity.

TITLE II. Associations, Companies, Partnerships.

TITLE III. Endowments. Foundations (religious, charitable, educational) having corporate property.

BOOK II. - REAL RIGHTS.

DIVISION I. OBJECT OF REAL RIGHTS.

TITLE I. Moveable property.

TITLE II. Immoveable property.

TITLE III. Literary, artistic and industrial property. -  
Trade-marks. - Patents. -

## DIVISION II. POSSESSION.

TITLE I. Acquisition of possessory rights.

TITLE II. Effect of possessory rights.

TITLE III. Extinction of possessory rights.

## DIVISION III. OWNERSHIP.

TITLE I. Public Property, *or property belonging to public bodies*

TITLE II. Private property.

Chapter 1. Acquisition of ownership.

Chapter II. Extent of ownership.

Part I. Fruits.

Part II. Accessories.

Part III. Co-ownership.

Part IV. Restrictions resulting from adjoining properties. *The enclosure of*TITLE III. Restrictions to the private property *right*

Chapter 1. Expropriation for public purposes.

Chapter II. Mines.

Chapter III. Forests.

## DIVISION IV. SERVITUDES OR EASEMENTS.

TITLE I. *Created by Law* Legal Servitudes (passage, flow of water, etc.)

TITLE II. Servitudes created by agreement (usufruct superficies, etc.)

## BOOK III. - OBLIGATIONS.

## DIVISION I. - HOW OBLIGATIONS ARISE.

TITLE I. - Contracts.

Chapter 1. Conditions of validity of contracts.

Part 1. Capacity.

Part II. Consent.

Part III. Object

Chapter ~~II~~<sup>I</sup>. Effects of contracts.

Part 1. As to the parties.

Part ~~II~~<sup>II</sup>. As to third persons.

Chapter ~~III~~<sup>II</sup>. Determination of contracts.

Part. 1. Determination by Court.

Part ~~II~~<sup>II</sup>. Determination by mutual consent.

Part ~~III~~<sup>III</sup>. Determination by condition subsequent.

TITLE II. - Unjust enrichment.

TITLE III. - Wrongful acts.

Chapter I. What may be considered a wrongful act.

Chapter ~~II~~<sup>II</sup>. Persons responsible,

Chapter ~~III~~<sup>III</sup>. ~~Assessment~~<sup>Int.</sup> of compensation.

DIVISION II. - MODIFICATIONS TO OBLIGATIONS.

TITLE I. Conditional obligations.

TITLE II. Alternative obligations.

TITLE III. Plurality of debtors and creditors.

Chapter I. Indivisible Obligations.

Chapter ~~II~~<sup>II</sup>. Joint and several obligations

DIVISION III. - EFFECTS OF OBLIGATIONS.

TITLE I. Effect as to the parties.

Chapter I. Default of debtor.

Chapter 2. Specific performance, damages, penal clause, earnest money.

Chapter 3. Preferential rights.

Chapter 4. Default of creditor. Tender and deposit.

TITLE II. Effects as to third persons.

Chapter I. Exercise by creditor of debtor's rights.

Chapter 2. Determination of contracts made in fraud of creditor's rights.

DIVISION IV. - DETERMINATION OF OBLIGATIONS.

TITLE I. Performance.

TITLE II. Impossibility of performance.



TITLE III. Release.

TITLE IV. Novation.

TITLE V. Set off.

TITLE VI. Merger.

TITLE VII. Prescription.

DIVISION V. - SPECIFIC CONTRACTS.

TITLE I. Sale.

TITLE II. Exchange.

TITLE III. Hire

Chapter 1. Hire of properties.

Chapter 2. Hire of services.

Chapter 3. Hire of work.

Chapter 4. Carriage.

TITLE IV. Loan.

Chapter 1. Loan for consumption.

Chapter 2. Loan for use.

TITLE V. Deposit.

TITLE VI. Agency.

TITLE VII. Business management.

TITLE VIII. Gift.

OF SPECIFIC CONTRACTS.

CHAPTER 1. SALE.

CHAPTER 2. EXCHANGE.

CHAPTER 3. HIRE.

CHAPTER 4. LOAN.

TITLE III. Release.  
 TITLE IV. Novation.  
 TITLE V. Set off.  
 TITLE VI. Merger.  
 TITLE VII. Prescription.

DIVISION V. - SPECIFIC CONTRACTS.

TITLE I. Sale.  
 TITLE II. Exchange.  
 TITLE III. Hire  
     Chapter I. Hire of properties.  
     Chapter 2. Hire of services.  
     Chapter 3. Hire of work.  
     Chapter 4. Carriage.  
 TITLE IV. Loan.  
     Chapter 1. Loan for consumption.  
     Chapter 2. Loan for use.  
 TITLE V. Deposit.  
 TITLE VI. Agency.  
 TITLE VII. Business management.  
 TITLE VIII. Gift.  
 TITLE IX. Suretyship.  
 TITLE X. Pledge.  
 TITLE XI. Mortgage.  
 TITLE XII. Compromise.  
 TITLE XIII. Arbitration.  
 TITLE XIV. Wager. Lottery.  
 TITLE XV. Association. Partnership. Company.  
 TITLE XVI. Insurance.  
     Chapter I. Insurance against loss.  
     Chapter 2. Insurance on life.  
 TITLE XVII. Negotiable instruments.  
 TITLE XVIII. Current account.  
 TITLE XIX. Commerce by sea.  
     Chapter I. Ships and shipowners.  
     Chapter 2. Masters and crew.  
     Chapter 3. Carriage by sea.  
     Chapter 4. Sea damage. Average.  
     Chapter 5. Insurance.

**TITLE VII. Prescription.**

**DIVISION V. - SPECIFIC CONTRACTS.**

**TITLE I. Sale.**

**TITLE II. Exchange.**

**TITLE III. Hire**

• **Chapter I. Hire of properties.**

**Chapter 2. Hire of services.**

**Chapter 3. Hire of work.**

• **Chapter 4. Carriage.**

**TITLE IV. Loan.**

**Chapter 1. Loan for consumption.**

**Chapter 2. Loan for use.**

**TITLE V. Deposit.**

**TITLE VI. Agency.**

**TITLE VII. Business management.**

**TITLE VIII. Gift.**

**TITLE IX. Suretyship.**

**TITLE X. Pledge.**

**TITLE XI. Mortgage.**

**TITLE XII. Compromise.**

**TITLE XIII. Arbitration.**

**TITLE XIV. Wager. Lottery.**

**TITLE XV. Association. Partnership. Company.**

**TITLE XVI. Insurance.**

**Chapter 1. Insurance against loss.**

**Chapter 2. Insurance on life.**

**TITLE XVII. Negotiable instruments.**

**TITLE XVIII. Current account.**

**TITLE XIX. Commerce by sea.**

**Chapter 1. Ships and shipowners.**

**Chapter 2. Masters and crew.**

**Chapter 3. Carriage by sea.**

**Chapter 4. Sea damage. Average.**

**Chapter 5. Insurance.**

**BOOK IV - INHERITANCE - WILLS.**

**BOOK V - PROVISIONS OF PRIVATE INTERNATIONAL LAW.**

**TITLE I. Juridical conditions of foreigners**

**TITLE II. Conflicts of laws.**

**TITLE III. Form of deeds**

**TITLE IV. Effects of foreign judgments in Siam, and of Siamese judgments abroad.**



Chlorophyll :-

• *Journal of Management Education* 32(10):1033-1046

[illegible]



## Memorandum

W. Padoux, Legislative Advisor  
to the Minister of

When the Codification Commission of the Ministry of Justice the draft General Code concerning Obligations, the Commission think that the question of the general structure of the whole Code would be discussed and made therefore as to that structure were submitted regarding the distribution of the Siamese Civil Code.

I understand now that the main point to be examined. The question whether it would not be advisable to group several provisions of the Code together under Obligations.

The Codification Commission has had several meetings on the project. We have revised the distribution prepared in Paris in February 1909, and we have examined more rules might be inserted in the General Code of the Code.

The enclosed paper (No. 1) shows the project.

As a preliminary remark, I must say that the Commission has already proposed to promulgate first the part of the Code concerning Obligations and Contracts, together with the provisions as may be necessary for the construction and application of the rules concerning obligations and contracts.

13.11.09.

## Memorandum

Mr Padoux, Legislative adviser  
to the Minister of Justice.

When the Codification Commission submitted to the Ministry of Justice the draft General Provisions concerning Obligations, the Commission did not think that the Question of the general structure of the whole Code would be discussed. No remarks were made therefore as to that structure and no documents were submitted regarding the distribution of the future Siamese Civil Code.

I understand now that the Ministry would like the point to be examined. The question has been raised whether it would not be advisable to publish the General Provisions of the Code together with the Obligations.

The Codification Commission has just held two meetings on the project. We have revised the draft — distribution prepared in Paris in February & March 1909, and we have examined more closely which rules might be inserted in the General Provisions of the Code.

The enclosed paper (n° 1) shows the proposed distribution.

As a preliminary remark, I must point that the Commission has already proposed to ~~put~~ the Government to promulgate first the part of the Code concerning Obligations and Contracts, together with such General Provisions as may be necessary for securing a proper construction and application of the rules concerning obligations and contracts.

The parts of the Code concerning Persons, — Property, Inheritance and Private International Law, would be drafted afterwards. When they are finished, the General Provisions would be reexamined and completed. The provisions concerning Obligations would be inserted in their proper place, and the Civil and Commercial Code would be published as a whole under one set of numbers.

The general structure of the draft has been made mostly after the German Civil Code, as may be seen from the enclosed summary of that Code (Nº 2).

But there are still a certain number of differences between the German Codes and our draft.

The order of Books in the German Code is :

1. — General Provisions
2. — Obligations
3. — Property.
4. — Family.
5. — Inheritance and wills.

The proposed order for the Japanese Code is :

1. — General Provisions.
2. — Persons and Family.
3. — Property.
4. — Obligations.
5. — Inheritance and wills.
6. — Private International Law.

The Commission thought it was better to deal first with persons and property and afterwards with Obligations because Obligations are, as a rule, legal relations by which persons are bound to do something with properties. Therefore it seems more logical that persons and properties be defined before obligations. The Germans decided to deal with Obligations first;

consequently they were obliged to insert in the general provisions one chapter about persons and one chapter about property in order to have persons and property defined before dealing with obligations.

The Japanese have followed very closely German lines in their Civil Code. - Yet they have adopted a different order:

1. - General Provisions
2. - Real rights or Property.
3. - Obligations
4. - Persons and Family
5. - Inheritance and wills.

That is to say they have put 'Property before Obligations'. Family was left after Obligations, just as in the German Code, and therefore a certain number of provisions concerning Persons were inserted in the General Provisions (see no 3).

The Commission do not think that it ~~was~~ is essential to put Obligations after Persons and Property rather than to put them before. If the Siamese Government like better the German order, we would not object to it. But we are still of opinion that it is more logical to deal with Persons and Property, which are the elements of Obligations, before dealing with Obligations.

The main difference between the German distribution and the Draft Siamese distribution lies with the contents of the General Provisions.

The German General Provisions include:

1. - Persons
2. - Things (or Property.)
3. - Juristics acts
4. - Period of time
5. - Prescription.
6. - Exercise of rights - Self defence - Self help.
7. - The giving of surties.



At present the Commission consider that the following chapters may take place in the Siamese General provisions:

1. - General rules about application and construction of law.
2. - Exercise of rights. - Self defence - Self help.
3. - Period of time.
4. - Prescription.

that is to say chapters 4. 5. & 6 of the German General Provisions.

The Commission is opposed to the Introduction of chapter 7 in the Siamese General Provisions. We are of opinion that it is much clearer to put the giving of sureties in the Book on Obligations, as being a specific contract. Mortgage of land alone might be placed in the Book concerning Property, because it is intimately connected with the rules concerning tenure of land. With the German system, part of the rules concerning sureties are in the General Provisions (art 232 - 240), part in the specific contracts (Suretyship, art 765 - 778), part in the 3<sup>rd</sup> Book, Property (Mortgage, art 1113 - 1190; pledge, art. 1204 - 1296.)

In the Japanese Code the rules concerning Suretyship are in the Book III (Obligations.) the rules concerning Pledge and Mortgage are in Book II (Property) just as in the German Code. But there is nothing concerning sureties in the General Provisions.

Chapters I (Persons) and 2 (Property) of the German General Provisions are quite unnecessary if the distribution proposed by the Commission is adopted; the whole matter of Persons



and Properties being placed before the Obligations in our draft. I must point that with the system suggested by the Commission the matter of Persons or Properties is not divided as it is in the German Code. It is dealt with in one set of provisions, which, I submit, is clearer for the judge. For instance, in the German Code the provisions concerning minority and majority are in the first Book, section I, art 1-20. The contracting capacity of minors is in the first Book, section III, art 104-113. The representation of minors by their parents or guardians is in Book IV. Besides, the general rules about representation are in Book I, section III, art 104-111. The whole matter is scattered in four different places, whilst in the draft of the commission it is dealt with in the Book concerning Persons, with the only exception of 5 sections about minors in the chapter concerning capacity of parties to a contract.

Then remains chapter 3 of the German General Provisions. The chapter is headed "Juristic Acts" and contains the following divisions:

- 1.- Capacity of exercising rights
- 2.- Expression of intention
- 3.- Contracts
- 4.- Condition. - Time clause
- 5.- Representation
- 6.- Authorization. Ratification

The main difficulty in adopting the German system is the theory of "Juristic acts" or "legal acts" or "acts-in-the-law", as translated by various commentators.

The German Code does not define what a "Juristic Act" is. In Mr. Saleilles' commentary it is said that a "Juristic act" is different from a "juristic fact". - "A 'juristic fact' is, 'a voluntary fact to which the law gives a lawful effect, such as a wrongful act. A 'juristic act' is an expression of will intended 'to create a lawful consequence'. I must confess that I do not quite well understand the distinction. A wrongful act is defined in the German Code as a voluntary fact; yet the German Code admits that harm done involuntarily is also a wrongful act. In the German theory, wrongful acts are not juristic acts; they are juristic facts. The chapter concerning wrongful acts is therefore titled: 'wrongful facts' in Mr. Saleilles' translation. But curiously enough, the first french translation of the German Code, by Mr. Meulenaere use the title 'Wrongful acts'. The whole distinction being between 'acts' and 'facts', no translator understands 'act' where the other translator understands 'fact'.

The Commission thought that such fine distinctions would be rather impossible to understand for the average Judge. I know of German lawyers who do not understand them and besides that, it would be very difficult to translate it in to plain. Siamese.

Japan has adopted the theory of "juristic acts" but the Japanese Code does not define the meaning of the expression 'Juristic act'.

Chapter I of the German section on juristic acts deals with the 'Capacity of exercising rights'.

It is devoted to the capacity of minors and insane persons. The commission think that it would be better to deal with the matter in the Books concerning persons and obligations. I have already shown that the German Provisions concerning minors are to be found in four different places. — ~~A judge who has to decide~~. It is not a safe system. A judge who has to decide whether a contract entered by a minor is valid or not would certainly like better to look at one or two chapters only than to look at four chapters. The commission think therefore that the provisions of chapter I of juristic acts would be better placed in the Books concerning persons and obligations.

Chapter 2 deals with the "Expression of intention". The commission has just considered the point and they think that it may be advisable to have rules concerning expression of intention in the general Provisions. These rules would deal with expression of intention obtained by mistake, duress or fraud. The present draft on obligations contains similar rules, but they refer only to contracts. It may be useful to extend them to any expression of intention whether the expression refers to a contract or whether it refers to any other declaration having a legal effect.

Chapter 3 deals with "Contracts". The matter of Contracts is then divided in the German Code into 2 parts, one in Book I, section III, chapter 3, the other one in Book II, section II. It is most inconvenient. — In the Japanese Code whatever concerns Contracts has been placed in Chapter II of Book III concerning Obligations.

We did the same in our draft.

Chapter 4 concerning Conditions and Time clause deals with a matter which is practically connected with obligations only. A condition or a time clause is something to which the performance of an obligation is subject. We are therefore dealing with conditions and time clause in the Book on Obligations.

As to chapter 5 concerning Representation (that is to say powers belonging to Representatives) the Commission is still uncertain whether it may be advisable to place the matter in the General Provisions or to let it be decided in the specific parts dealing with Agency, — Parental Power, Guardianship and administration of Juristic Persons. We would prefer not to give a definite opinion until we have decided about the said specific parts.

The Commission is also inclined to postpone any decision as to the subject of chapter 6 (Authorizations. Ratification) until the other parts of the Code are drafted. The Commission think that they cannot submit formal proposals regarding the matter unless all the rules concerning Obligations and Persons at least have been framed.

Taking into consideration the fact that the siamese ~~Code~~ civil Code is made for practical purposes more than for scientific purposes, the Commission is of opinion that the final decision about General provisions may be safely delayed up to



the very end of the work on the Civil Code. The general Provisions of a Code are not general principles from which every subsequent rule is deduced. Mr. Saleilles in the Preface of his translation, explains how the German Code was compiled and says: "It was agreed that the General Part would not consist of rules in abstracto and juridical definitions, but of rules in concreto concerning the several juridical matters which could not take place in the special parts."

If we are to follow the German procedure, which I consider the safest, some General Provisions might be enacted together with the Obligations, but it must be well understood that these General provisions will be subject to numerous additions and also to some alterations when the Code is published as a whole.



# Distribution of Draft Siamese Civil Code..

## Preliminary - General Provisions

Division I. - General principles for application or  
construction of law

Division II. - Exercise of rights - Self defense - Self help

Division III. - Periods of time

Division IV. - Prescription

## BOOK I PERSONS and Family

### DIVISION I. - NATURAL PERSONS.

#### TITLE I. - Personal status.

Chapter I. Nationality.

Chapter 2. Capacity for exercising civil  
rights.

#### TITLE II. - Family.

Chapter I. Marriage.

Chapter 2. Divorce.

Chapter 3. Guardianship.

### DIVISION II. - JURISTIC PERSONS.

TITLE I. - Public corporations or public bodies  
with corporate rights (Government,  
Ministries, Municipalities etc.) Na-  
ture and extent of their civil capac-  
ity.

TITLE II. Associations, Partnerships, Companies.

TITLE III. Foundations (religious, charitable, educa-  
tional) having corporate property.

# BOOK II. - REAL RIGHTS *on Things*

## DIVISION I. OBJECT OF REAL RIGHTS.

TITLE I. Moveable property.

TITLE II. Immoveable property.

TITLE III. Literary, artistic and industrial property  
Trade-marks.- Patents.-

## DIVISION II. POSSESSION.

TITLE I. Acquisition of possessory rights.

TITLE II. Effects of possessory rights.

TITLE III. Extinction of possessory rights.

## DIVISION III. OWNERSHIP.

TITLE I. Public property, or property belonging to public bodies.

TITLE II. Private property.

Chapter I. Acquisition of ownership.

Chapter 2. Extent of ownership.

Part 1. Fruits.

Part 2. Accessories.

Part 3. Co-ownership.

Part 4. Restrictions resulting  
from the existence of  
adjoining properties.

TITLE III. Restrictions to the rights of private property.

Chapter 1. Expropriation for public purposes.

Chapter 2. Mines.

Chapter 3. Forests.

## DIVISION IV. SERVITUDES OR EASEMENTS.

TITLE I. Servitudes created by Law (passage, flow of water, etc.)

TITLE II. Servitudes created by agreement (usufruct, superficies, etc.)

# BOOK III. - OBLIGATIONS.

## DIVISION I. HOW OBLIGATIONS ARISE.

### TITLE I. - Contracts.

~~Chapter 1. Conditions of validity of contracts.~~

~~Part 1. Capacity.~~

~~Part 2. Consent.~~

~~Part 3. Object.~~

~~Chapter 2. Effects of contracts.~~

~~Part 1. As to the parties.~~

~~Part 2. As to third persons.~~

~~Chapter 3. Determination of contracts.~~

~~Part 1. Determination by Court.~~

~~Part 2. Determination by mutual consent.~~

~~Part 3. Determination by condition subsequent.~~

### TITLE II. - Unjust enrichment.

### TITLE III. - Wrongful acts.

~~Chapter 1. What may be considered a wrongful act.~~

~~Chapter 2. Persons responsible.~~

~~Chapter 3. Extent of compensation.~~

## *Of some particular kinds of* DIVISION II. - MODIFICATIONS TO OBLIGATIONS.

TITLE I. Conditional obligations.

~~TITLE II. Obligations subject to a time clause.~~

TITLE III. Alternative obligations.

TITLE IV. Plurality of debtors and creditors.

~~Chapter 1. Indivisible obligations.~~

~~Chapter 2. Joint and several obligations.~~

DIVISION ~~III~~<sup>IV</sup> - EFFECTS OF OBLIGATIONS.

TITLE I. ~~Effects as to the parties.~~

Chapter 1. Default of debtor.

Chapter 2. Specific performance, damages, penal clause, earnest money.

Chapter 3. Preferential rights.

Chapter 4. Default of creditor. Tender and deposit.

TITLE II. ~~Effects as to third persons.~~ *The right of the creditor*

Chapter 1. Exercise by creditor of debtor's rights.

Chapter 2. Determination of contracts made in fraud of creditor's rights

*Title III - The right of the action*

*Title IV - Assignment of compensation for non-performance*

DIVISION ~~IV~~<sup>V</sup> - DETERMINATION OF OBLIGATIONS.

~~TITLE I. Performance.~~

~~TITLE II. Impossibility of performance.~~

TITLE III. Release.

~~TITLE IV. Novation.~~

TITLE V. Set off.

TITLE VI. Merger.

~~TITLE VII. Prescription.~~

DIVISION V. - SPECIFIC CONTRACTS.

TITLE I. Sale.

TITLE II. Exchange.

TITLE III. Hire.

Chapter 1. Hire of properties.

Chapter 2. Hire of services.

Chapter 3. Hire of work.

*Title IV* ~~Chapter 4.~~ Carriage.

TITLE V. Loan.

Chapter 1. Loan for consumption.

Chapter 2. Loan for use.

*Chapter 3. Loan of money.*

TITLE \* VI. Deposit.

TITLE VII. Agency *(and)*

TITLE ~~VII.~~ *(Business management.)*

TITLE VIII. *Gift. Suretyship*

TITLE IX. *Suretyship. Pledge*

TITLE X. *Pledge. Warehousing*

TITLE XI. *Mortgage. Gift*

TITLE XII. Compromise.

TITLE XIII. Arbitration. Gambling and Betting

TITLE XIV. ~~Wager. Lottery.~~ *Current account*

TITLE XV. Association. Partnership. Company.

TITLE XVI. Insurance. Associations

Chapter I. ~~Insurance against loss.~~

Chapter 2. ~~Insurance on life.~~

TITLE XVII. ~~Negotiable instruments.~~ *Bills*

TITLE XVIII. ~~Current accounts.~~ *Current*

TITLE XIX. ~~Commerce by sea.~~

Chapter 1. ~~Ships and shipowners.~~

Chapter 2. ~~Masters and crew.~~

Chapter 3. ~~Carriage by sea.~~

Chapter 4. ~~Sea damage. Average.~~

Chapter 5. ~~Insurance.~~

#### BOOK IV. - INHERITANCE - WILLS.

#### BOOK V. - PROVISIONS OF PRIVATE INTERNATIONAL LAW.

TITLE I. Juridical condition of foreigners.

TITLE II. Conflicts of Laws.

TITLE III. Form of deeds.

TITLE IV. Effects of judgments of Foreign Courts in Siam and of judgments of Siamese Courts abroad.



# Distribution of the German Civil Code

## Book I General Provisions

### Section I Persons

1. - Natural Persons

2. - Juridical Persons

a) associations

b) foundations

c) ~~juridical persons of~~ <sup>or administrative</sup> ~~with~~ <sup>group</sup> bodies.

### Section II - Things

#### Section III - Juristic acts

1. - Capacity of exercising rights

2. - Expression of intention

3. - Contracts

4. - Condition - time clause

5. - Representation

6. - Authorisation - ~~apparent~~ ratification

#### Section IV - Periods of time

#### Section V - Prescription

#### Section VI - Exercise of rights - self defence -

self-help.

#### Section VII - The giving of surties

## Book II Obligations

### Section I - Object of obligations

1. - Prestation

2. - Creditor's delay

## Section II. - Obligations arising out of contracts

1. - Formation of contract
2. - Bilateral or reciprocal contracts.
3. - Promise of making prestation to a third person
4. - Earnest money. Penal clause
5. - Cancellation

## Section III. - Extinction of obligations

1. - Performance
2. - Deposit
3. - Set off
4. - Release

## Section IV. - Transfer of rights

## Section V. - Transfer of liabilities

## Section VI. - Plurality of debtors or creditors

## Section VII. - Specific kinds of obligations

1. - Sale
2. - Gift
3. - Hire
- etc. -

24. - Unjust enrichment.

25. - Wrongful acts

## Book III.

### Property

#### Section I. - Possession

#### Section II. - ~~General principles concerning~~ Immovable property

#### Section III. - Ownership

#### Section IV. - superficies

#### Section V. - Easements

#### Section VI. - Prescription

#### Section VII. - ~~Rents on land~~ Charges incumbent on land

#### Section VIII. - Mortgage of immovables. Rents on land.

#### Section IX. - Pledge of movables and immovable property.

Book IV  
Family

- Section I. - Marriage  
Section II. - Parental power  
Section III. - Guardianship

Book V  
Inheritance and Wills.

MINISTRE GÉNÉRAL

REPUBLIQUE FRANÇAISE

INDOCHINE

INDOCHINE

BUREAU POLITIQUE

Sai-gon le 26 Octobre 1909

OBJET

Le Gouverneur Général de l'Indochine  
à Monsieur PADOUX, Consul Général, conseiller  
Simplicien  
à Hanoï

• Mon cher Consul Général,

A la date du 22 Septembre dernier, vous avez  
exprimé le désir de recevoir quelques exemplaires des codes  
Laotiens, publiés en 1908 à Hanoï sous les auspices du  
Gouverneur Général de l'Indochine.

J'ai l'honneur de vous adresser sous ce pli,  
trois exemplaires du travail de M. Sallé.

Le Résident Supérieur au Laos m'a rendu compte  
que cet ouvrage avait été accueilli avec une faveur marquée  
par les populations du Laos français.

Veuillez agréer, Mon cher Consul Général, l'assu-  
rance de mes sentiments les meilleurs. /.

Assisté  
bon matin



*[Signature]*

Bangkok 16 novembre 1909

Monsieur le Gouverneur Général

Vous avez bien voulu m'en  
demander me faire parvenir trois exemplaires  
des Codes Laotiens publiés en 1908 à Hanoi sous  
les auspices du Gouvernement Général de  
l'Indo-Chine.

Je m'empresse de vous adresser  
l'expédition de l'un de ces intéressants publications  
dans la Commission de Codification des Lois  
Laotiens et prouve de tenir grand compte au  
cours de ses travaux.

Veuillez agréer, Monsieur le Gouverneur  
Général, l'expression de mes sentiments les plus  
dévoués

pour Kiobuthorosti  
Monsieur G<sup>ral</sup> de l'Indo-Chine



กมลบัญชาการ

กระทรวงยุติธรรม

วันที่

วันโกศลนทศก ๑๒๐

Dear Mr. Padoux,

I really do not think I am competent to criticize the structure of a Code. Speaking briefly, the country wants:-

- (1) Clearness:
- (2) Conciseness:
- (3) Brevity:
- (4) Simplicity & absence of philosophy: &
- (5) That arrangement which enables a man to discover what he wants as easily as possible: & therefore, as far as possible, law in any one point should be in the same place.

I am therefore inclined to form view that "reason" & "Things" should come before "obligation": and that "Act-in-the-law" should, if possible, be omitted. But I speak with all reserve for the reason given above.

Yours truly  
William Somerset

OBLIGATIONS.

It is necessary, in considering this portion of the Code, to remember that here we have only general provisions of Law and that these may be somewhat modified when we come to deal with Specific Titles. This was pointed out to me by M. Padoux in a discussion I had with him on one point to which I shall refer later on. As far, too, as I am concerned, this is a criticism from one trained to the English law and without any knowledge of the Codes of the Continent of Europe.

As far as the form goes it is not necessary to make any remarks: it is easy of reference and simple.

As for the Language, there are still several places where I have omitted to notice defects when I looked over the draft from that point of view. And this is a very important matter: I suppose the official Siamese text will be made from the English version. And in view of the future development of Siam and the consequences that result to her from these Codes, it is essential that the English should be as accurate as possible before it is used for translation or issued to the world at large. I would again venture to suggest that this will best be done by obtaining the assistance of some trained English scholar (e.g. a member of the

the Education Department) in collaboration with a lawyer who can see that it is not tampering with any agreed principles of Law. I do not know if the illustrations are to be incorporated in the Official text: I am inclined to think it will be advisable to do so. But they must then be very carefully scrutinised. For instance, the illustrations given of "Fraud" and "mistake" require careful consideration. Sects: 52 & 53.

I can well understand that in both cases the Courts would refuse to give any redress to the purchaser of the horse in the one instance and of the bowl in the other. The doctrine of *Caveat Emptor* need not be pushed too far for this purpose.

Certain questions of principle arise from a perusal of this draft, and I will name them as far as possible in the order in which they occur in the draft.

1. There is no reference to the doctrine of Consideration. Apparently a *nudum pactum* is actionable and may constitute a contract, even though not under seal. This surely is a matter for careful consideration. And even the definition of "contract" says it is an agreement "intended to create" an obligation: surely it does create one.

2. I am afraid that the element of "intention" looks very large in the rules for construction of contracts: too much stress is laid on it and too little on the words

words used. This will open the door to such litigation and to such difficulty for the Courts. And here I should mention a special rule (sect. 13) where the last clause of repugnant clauses is to be taken as the real one. It may well be said that the parties in making a contract know their mind best at the commencement of the negotiations, unlike a testator, whose mind may alter in his intentions.

3. The right of revocation of an offer is raised on sect. 33. I see no reason why an offer should not be revoked before acceptance by the offeree; nor before his acceptance has left him en route for the offerer. And I do not find any reference to the revocation of an acceptance, which might not unreasonably be allowed up to the time it has reached the offerer.

4. The element of "mistake", already referred to by me above, seems to include mistakes of law and of fact. If so the idea that every one is presumed to know the law has no further application. I have already queried the illustration given here: that is a genuine mistake of fact, common to both parties, with no fraud on either side and where the purchaser had as much opportunity of finding out the genuineness of the bowl as the seller. Is there to be a general warranty on the sale of goods? I fear he that will put an enormous tax on the sellers



in this country. Of course, where there is fraud, (and I note that there is no definition of this), another element is at once introduced. While here, I might mention the matter of fraud: the illustration given might easily be extended to what we know as an "auctioneer's puff". Must there not be some duty of disclosure arising from the relations between the parties?

5. As far as I can see the definition of "duress" is very wide, but it does not cover what we know as "undue influence". This element should not be overlooked, more especially in a country where the characters of the people are such that they are very liable to this form of trickery.

6. And there is no clause dealing with misrepresentation: and the rights of parties therefrom. I do not know if it is intended to include all such cases under "fraud": if so the want of definition is again seen.

7. As regards Minors, it is to be observed that considerable extension is here given to their liability. If a minor is not capable of contracting, except with the assistance of his lawful representative, how is this person to come into existence? is it intended that he should be the guardian appointed by the Court? if so it should be stated. If not, how is a third party to ascertain who is the lawful representative,

or



or if the person put forward is, such really is not, or if he is not a real person.

8. The liability of employers for the wrongful acts of their employees is remarkably limited. It would be practically impossible to get a judgment against the firm like the Barnes Co. for a negligent act of the steersman of one of their launches. And a judgment against the steersman would of course be valueless.

9. The place of performance of a contract in the absence of special agreement is that of the debtor's domicile. I do not quite understand the word "domicile" here; but should not the general rule be that it is for the debtor to seek out the creditor? I have already had a talk with M. Padoux on this point and therefore put it in here formally.

10. As I understand the draft the Courts are to order Specific Performance of a contract whenever possible. This is apparently so, even where damages are ample compensation. This is pushing the doctrine a long way and there are many mercantile contracts where such an order might be made but a Court would find it very hard to carry it out. So also is the phrase "in force".

11. The question of "prescription", or as I should prefer to call it "limitation of actions" appears here throughout. It

is not clear if it is intended merely to bar a remedy or to give a new title.

12. The doctrine of deposit means more machinery. It would seem to be implied in the rule that creditors have to seek their debtors. If the debtors had to seek the creditors, then tender would be practically enough.

13. Damages. I do not think the definition of these in Sect. 318 is enough. And there seems to be a tendency to limit them in the draft. The doctrine of Earnest-money, where this has no reference to the amount of importance of the contract seems to me to limit them considerably, and to open the door to much hardship. This also applies to compensation for wrongful acts? limited to injury actually caused, which is hardly to be distinguished from that awarded in the case of the compensation for breach of a contract. There surely ought to be some difference in the measure of damages awarded. There are some points which I should like to mention, though they hardly seem to involve questions of principle:— when he is responsible

a. The word "prestation" is a new one and so also is the phrase "in mora". But I cannot at the time suggest any single word to include all that is meant in each case.

b. I take it "immorality" is a ground for dealing with a contract. But this seems to have been left out. This might be included in "public policy".

c. I see the phrase "grossly negligent" is used in sect. 52. It is intended that there shall be degrees of negligence?

d. Sect. 164 gives a very considerable advantage to the debtor. Why should he have it? A creditor sells a right subject to litigation for many reasons and the third parties buy it considerably below its real value: why should the original obligation be thereby reduced?

e. In sects. 231 & 232 the words "or before" ought to be "and". Otherwise performances might be limited to one day only.

f. In sect. 240 the words "as far as possible" seem to be wrong. They ought to be "if necessary".

g. I think the interest mentioned in Sect. 264 must be that provided by sect. 263 (1) and not 263 (2).

h. In Sect. 324 the debtor ought not to be relieved if the delay is due to some one for whom he is responsible.

(Signed) *Edmund Turner*.

Ministry of Justice

on the several points

November 1st. 1906.

be glad to know what

(Copy)

222

18th. December 1939.

M E M O R A N D U M .  
-----

Mr. Padoux, Legislative Adviser  
to

H. H. H. Prince Rajburi, Minister of Justice.

I have just finished the report on the Proposed Code of Penal Procedure, the copy of which I beg to enclose.

Would Y.R.H. kindly let me know if I shall have that report printed at once with the duplicator, or if you would like to go through it first and see whether some parts in it ought to be omitted or modified.

Three ministerial Departments, viz. Justice, Interior and Local Government, are directly concerned in the matter. I have already suggested that the report be submitted to these three Departments and be discussed by a mixed Commission. Now Y.R.H. may think advisable that the report be first examined by the various competent persons in the Ministry of Justice, and that it be submitted to the other Ministries only after the Ministry of Justice has come to some conclusion on the several points raised in it. I would be glad to know what is the view of Y.R.H. on that particular question.

In case the report were to be printed now, how many copies of it would be necessary ?



ต้นฉบับไม่มีหน้านี้

**NO THIS PAGE IN ORIGINAL**





There is a maxim "quid quid plantatur solo, solo cedit." 'The solum' belongs to B, therefore the paddy belongs to B also. The creditor of A has no right to seize the paddy crop which is planted in the land of B. The creditor of A is in the same position as a receiver of A's property. He can exercise no greater right than A i. e. A can cut the paddy but is liable for the rent to B. Instead of A. Therefore if C. seizes the paddy he must pay the rent to B. This is Siamese Law. English Law reaches the same conclusion but is based on different grounds (see Woodrentons Encyclopedia vol. VI page 426 and Woolfull Landlord and Tenant page 500 and 14 and 15 Victoria C. 25 Section 2.) The principles of Siamese Law which we have discussed above apply only to growing paddy which is regarded as part of the land and belongs to the owner of the land, but once the paddy has been cut the maxim "quid quid plantatur solo solo cedit" is no longer in point, because the paddy is no longer part of the soil. Then the question arises whether C can seize the cut paddy, and the answer involve different considerations of law to those treated above.

Before the new system C could not seize the paddy whether it was cut or not, but now the new procedure and the new regulations for the collection of the land tax are in force. And so we must consider the question in the light of this fresh legislation.

Formerly the farmer was responsible for the land tax. The tax was levied on him, not on the land, but after the Land Tax Act R.S. 119 (Royal Gazette page 450) the landlord was made liable for the tax. In default of payment the bailiff of the Court was empowered to seize the land and sell it by public auction, and thus the tax became levied on the land not on the individual. It is quite reasonable to give a landlord greater protection against the loss of the benefi

of his property.

Hence in our opinion <sup>that</sup> it is time for our law should be assimilated to the law of other countries in this respect, and a landlord should be entitled to seize in satisfaction of his rent paddy crops which have been cut but not removed from the land.

Example 1. A rents land from B. The paddy crop is still standing, if a creditor of A seizes the land in execution, such creditor is liable for the rent instead of A.

Example 2. A rents land from B. The paddy crop has been cut, but not removed from the field, the creditor of A must give B sufficient paddy to cover the rent.

Example 3. A rents land from B. The paddy crop has been cut and agreed to be sold to a 3rd. party but such 3rd. party has not removed it from the field. B is entitled to seize sufficient paddy to satisfy his rent.

Example 4. A rents land from B. The paddy crop has been cut and sold to C who has removed it. B is not entitled to seize any paddy in satisfaction of his rent.

The four preceding examples are not contrary to Siamese law and custom in force before the new system. The question then arises whether the new procedure makes any change in the law concerning seizure of land.

The answer is that the new system was never intended to affect the law concerning land and thus the law at the present time is exactly the same as in the four examples we have given.

If the law is not the same as in the four examples some very curious results would ensue.

E.G. A rents land from B. A gets C to bring a collusive action which A arranges to lose. C enters, seizes all the paddy and secretly hands over the proceeds to A. B gets nothing but loses his land as the bailiff seizes and sells it by public auction to cover the land tax. This would mean that when a landlord lets his land he runs the risks and losing it without a chance of avoiding the loss because the law makes fraud easy for the Tenant, and leaves the landlord helpless to prevent it.

To sum the whole matter up, the law concerning the seizure of property on land should practically follow English Law.

Our remarks above apply only to paddy crops, not to cattle and implements of agriculture, but in point of fact Siamese custom permits the landlord to seize cattle and implements of agriculture but nothing else in default of rent. Formerly English Law allowed the landlord to seize many more things than these, but now things liable to seizure have been very much limited. According to English Law lodging house keepers can seize the property of their Tenants in default of rent, but we have never heard in Siam of lodging house keepers doing this on their own initiative, only owners of land and gardens, but the Court can extend the Law in this direction.

ห้องรองเสนาบดี

กระทรวงยุติธรรม

วันที่ ๑๘ Feb 1910

รัตนโกสินทรศก ๑๒๓

Dear Mr. Padoux

Can you let me have a  
short Memo. by return on the  
Subject you spoke to me about  
yesterday. Just give me a  
gist of what your idea on  
the matter is.

Yours sincerely  
Chas. Ross



February 22<sup>nd</sup> 1910.

Memorandum.

Mr. Tadoue, Legislative Adviser  
to  
His Highness Prince Charoon, Deputy  
Minister of Justice.

The work of the codification Commission has been progressing satisfactorily during the last three months. Most of the specific contracts are now ready. The part concerning Bills of Exchange, cheques and Promissory notes, which is of great importance shall be finished in a few days.

In order that the work be continued it is necessary that the Government shall take a decision on several preliminary points. These points are mentioned in the memorandum which I submitted to the Ministry of Justice on the 20<sup>th</sup> July 1909, 13<sup>th</sup> November 1909 and 6<sup>th</sup> January 1910. They principally refer:

1<sup>o</sup> To the general structure and distribution of the Civil and Commercial Code.

2<sup>o</sup> To the advisability of publishing the Civil and Commercial Code in two Parts, at about two years interval, or publishing it as a whole.

3<sup>o</sup> To the advisability of submitting the draft concerning commercial contracts to the principal representatives of the

mercantile community in Bangkok.

42 To the appointment of a mixed-commission including Siamese Lawyers for the purpose of going through the text prepared by myself and my assistants amending it and altering whatever might be found to be inconsistent with the Siamese law and practice.

With regards Criminal Procedure I have submitted on the 15<sup>th</sup> december 1909 a long report dealing with the various points on which the present criminal procedure might eventually be modified. I have proposed that the reports be submitted to a sub-committee including representatives of the several Ministries concerned in the matter. (i.e. Justice; Interior; Local Government.)

It becomes now impossible to continue the work of the Commission unless a decision is taken on these matters. So long as no definite scheme is adopted for the Civil and Commercial Code, we feel unable to draw up a number of general provisions, since we do not know whether these provisions are to be prepared for a code on Obligatory only or for a Complete Code. There are also numerous specific points which were left undecided, the European advisers thinking they could not properly make proposals before having consulted with Siamese Lawyers.

As to the Criminal Procedure, it is useless preparing a detailed draft, unless we know

under which lines the Government wishes criminal Procedure to be conducted.

Mons. Moutcharville, Rivière and Guyon are entitled to a leave of six months during the currency of their agreement. Since the total work was anticipated to last not more than 4 years or 4 years and a half, the Ministry of Justice was willing to let them go on leave say in April 1911. I thought that by that time the Code of Criminal Procedure and the Part of the Civil Code concerning obligations would be ready. But if decision on the above mentioned points is delayed, I fear that none of these Codes may be submitted to His Majesty in 1911.

February 22nd 1910. -

## MEMORANDUM. -

Mr. Padoux, Legislative Adviser,

to

His Highness Prince Charoon, Deputy Minister of Justice.

The work of the codification commission has been progressing satisfactorily during the last three months. Most of the specific contracts are now ready. The part concerning Bills of Exchange, cheques and Promissory notes, which is one of great importance shall be finished in a few days.

In order that the work be continued it is necessary that the Government shall take a decision on several preliminary points. These points are mentioned in the memoranda which I submitted to the Ministry of Justice on the 29th July 1909, 15th November 1909 and 6th January 1910. They principally refer:

1° To the general structure and distribution of the Civil and Commercial Code.

2° To the advisability of publishing the Civil and Commercial Code in two parts, at about two years interval, or publishing it as a whole.

3° To the advisability of submitting the drafts concerning commercial contracts to the principal representatives of the mercantile community in Bangkok.

4° To the appointment of a mixed commission including Siamese Lawyers for the purpose of going through the text prepared by myself and my assistants, amending it, and altering whatever might be found to be inconsistent with the Siamese Law and practice.

With regards Criminal Procedure, I have submitted on the 18th December 1909 a long report dealing with the various points on which the present criminal procedure might eventually be modified. I have proposed that the report be submitted to a sub committee including

**ต้นฉบับไม่มีหน้านี้**

**NO THIS PAGE IN ORIGINAL**





# MEMORANDUM

---

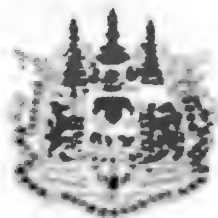
March 2<sup>nd</sup>. 1910

Prince Charoon, Deputy-Minister of Justice  
to  
Monsieur Padoux, Legislative Adviser.

In reply to your Memorandum of the 22nd February, pointing out to me that, in order that the work of the Code Commission should be continued, it is necessary that a decision on several preliminary points which have been set out in the Memoranda submitted to the Ministry of Justice on the 20th July 1909, 13th November 1909, and 6th January 1910 should be taken, I beg to inform you that I have carefully read and thought over these points.

Although quite aware that the points raised are of importance and that they are properly matters that should have the sanction of H.R.H. the Minister of Justice, but owing to the illness of the Prince, who has been advised by the Doctor to rest for 6 months, I have taken it upon my own responsibility to make a decision on them, in order not to cause delay or waste of time in the work of the Commission.

I will proceed to answer each point raised in your Memorandum under reply.



1) As to the general structure and distribution of the Civil and Commercial Code :- I agree with the proposal of the Commission as set out in your Memorandum of the 13th November 1909.

2) As to the advisability of publishing the Civil & Commercial Code in two parts, at about two years interval or publishing it as a whole :- I am of opinion that it would be, in the end, to the advantage of H.M.'s Government to publish it as a whole for the following reasons :-

- a) It is the best from the Legal point of view which is also the opinion of yourself;
- b) It will be more uniform;
- c) and for reason, set out below, in paragraph 4 of this Memorandum.

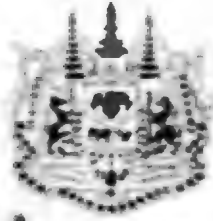
As regards the delay in publication of part of the Civil Code that this decision would entail it would be a matter of 2 or 3 years only. It simply means instead of having part of the Code applied to certain of the foreign subjects under recent Treaties, we defer assuming this right till the whole is finished and applied together. I prefer the delay of a few years to applying only part of Code at different periods, for the reason that it will cause less confusion and misunderstandings on the part of the judges who have to apply the law. It will also be preferable for the persons who come under the law, as instead of being uncertain as to what subject has been codified and what has not, the whole of the Civil and Commercial law will be applied at the



the same time.

3rd. As to the advisability of submitting the drafts concerning commercial contracts to the principal representatives of the mercantile community in Bangkok, I am of opinion that it would not be advisable, as it is difficult to draw a line as to whom the drafts should be submitted and to what class of the commercial community it should be limited. If the draft has been submitted and is not then adopted afterwards, it may become a grievance on the part of the persons who approved of it. I would suggest that the proposal you made to me, to ask information of different classes of the mercantile community in a private manner as regards trade practices, would be preferable.

4th. As regards the appointment of a mixed commission including Siamese Lawyers, I am afraid that for the moment, I am unable to decide on this point, owing to the difficulty of choosing them. They will have of course necessarily to be those who understand English, and unfortunately for the moment, these have more that they can do. They are overwhelmed with work, owing to the sudden change and new procedure, involved by the recent Treaty with Great Britain. Time must be given them to familiarise themselves with the new procedure and also to instruct others who do not understand any European language. The new state of affairs has been too recent to withdraw them from the Courts. Hence my choice of publishing the Code as a whole instead of in two parts.



It is also to avoid asking these to do work more than they can possibly do with any degree of efficiency and at the same time to avoid waste of time on the part of the Code Commission.

5th. As regards the Criminal procedure, I regret that for the moment, I cannot give any decision not having seen the report dated the 18th December which you submitted. As soon as I have studied it I will be able to give you a decision. I have hastened to indicate the lines on which the Civil and Commercial Code should be drafted, in order that no time need be wasted by you and your assistants, as you say that it has now become impossible to continue the work unless a decision is taken on the scheme to be adopted for the Civil and Commercial Code.

As regards the six months leave which will be due to Messrs Moncharville, Rivière & Guyon, I have no objection to their taking them in April 1911. The period of their absence can be employed in reviewing their draft, so far has been prepared, by those whose opinion would be useful in taking.

*Charvillat*

May 25th. 1910.

Dear Mr. Graham,

The Code Commission are at present engaged in drafting provisions concerning partnerships and Companies. It would help us very much if we could obtain copies of the charters and articles of associations of the last companies formed in Bangkok, for instance:

The Siam Commercial Bank

The Monam Motor Boat Co.

The Siam Transport. Co.

The Siamese Tramways. Co.

The Sriracha Co

The Meklong Railway Co.

The Sino Siamese Mail Steamship Co.

The Siam Stone Works Co.

The Bangkok City Bank

Printed copies of these documents are usually deposited at the Ministry of Agriculture. Is it possible to get them? I would like better to have the English text, but the Siamese text might do.

Apologizing for the trouble, I remain, Dear Mr. Graham.

Very truly yours.



May 20th 1910. -

## MEMORANDUM. -

Mr. Padoux, Legislative adviser  
to  
His Royal Highness Prince Rajburi,  
Minister of Justice.

The Code Commission has now finished that part of the draft civil and commercial Code which deals with Partnerships and Companies.

The draft provisions are partly taken out of a draft act titled "The Law of Siamese Partnerships and Companies" which was prepared by the advisors of the Government in the year 119.

In this draft, there is a section 53 which runs as follows:

"Section 53. - No Company is allowed to purchase in Siam lands, houses or other buildings, otherwise than for the purpose of managing, conducting and carrying on the business of the Company. No lands, houses or other buildings may be purchased so as to be in any manner made instrumental for the purposes of trade or speculation. When a Company purchases any property, consisting in lands, houses or other buildings, notice in writing thereof is to be given to the Minister of Finance within three months <sup>from</sup> the purchase."

The said provision has been incorporated in our draft where it reads:

"Section 110. - No limited company is allowed to acquire in Siam lands, houses or other immoveable properties otherwise than for the purpose of managing, conducting and carrying on the business of the company. No lands, houses or other buildings may be acquired or owned for the purposes of trade or speculation. When a company acquires any property, consisting in lands, houses or other immoveable properties, notice in writing thereof must be given to the Minister of Finance within three months from the acquisition."

The original provision was probably inserted in the draft Act with a view of limiting the extension of mortmain in Siam, and also of preventing foreigners from acquiring, through companies formed by them under Siamese law, immoveable property which the treaties did not allow them to acquire personally.

The second motive has lost most of its importance, since French asiatic subjects and British subjects have now the right to possess land. The question of whether companies shall be allowed to own land or not is not any more connected with foreign policy. It is a matter of internal policy, and the rule to be adopted shall be the same whether the shareholders <sup>of a</sup> company are Siamese subjects or foreign subjects.

But the first motive (question of mortmain) is still worth consideration.

The Code Commission have therefore examined the question and they have come to the conclusion that if the principle laid down in the original section 53 is to be maintained, some alterations ought to be introduced in its present wording.

# I

The first point is to clearly define which acquisitions of land are permitted by law, which are forbidden.

The draft allows a company to acquire the lands or buildings which are necessary for the purpose of managing, conducting and carrying on the business of the company. But no land may be purchased so as to be in any manner made instrumental for the purposes of trade or speculation.

Thus for instance a Steamship company may own the lands and buildings which are necessary for its offices, landing places and godowns. A Banking company may own a building for its offices and its director, etc. In such cases, the land is owned for the purpose of managing the business of the company.

On the contrary, a Company cannot acquire land in order to resell it afterwards, because it would be land speculation, and land cannot be purchased for the purposes of speculation. A company like the "Siam Canals and Irrigation Co" could not be formed under Section 33 of the original draft Law on Companies. .

But take for instance a Rubber Company. For the purpose of conducting its business, such company must acquire land and plant it. But plantation of rubber trees may be considered as making the land "instrumental for the purposes of trade".

Shall we therefore consider that a Rubber Co or any other similar Co cannot be formed in Siam?

If the words "purposes of trade or speculation" are to be construed as simply meaning "trade in land", or "buying land in order to resell it", then a Rubber Co could be authorized. But what about the principle of restricting mortmain? The general idea about mortmain is to prevent juristic persons to acquire land, because juristic persons always keep the land they acquire, and since their duration exceeds the duration of the life of several successive human generations, the land they own is practically withdrawn from economical and commercial circulation. Now, if the words "purposes of trade or speculation" are construed as meaning "buying and selling land", then the companies which propose to acquire land in order to resell it, that is to say companies which do not propose to keep mortmain land, shall not be allowed, but companies who propose to acquire land in order to keep it and work on it, that is to say who propose to form mortmain land, shall be allowed. <sup>on the contrary,</sup> If the words "purposes of trade and speculation" are construed in a wider way, then a Company shall not be allowed to carry on any trade or business connected with land.

It seems therefore that the Government ought to consider the question whether companies formed under the Siamese law shall be allowed to own land or not, and, in case they should



not be allowed, to decide which exceptions may be admitted.

Personally, I am not in favour of restricting the right of ownership of companies. The question of restriction has never had any importance in Europe except in connection with the Roman Catholic Church and with convents, monasteries and other religious congregations. But vatic, churches and religious congregations have nothing to do with commerce. If their right of owning land must be restricted, that is to be decided in other laws or in other parts of the Code. Meanwhile, with regard to the Roman Catholic Church in Siam, the question has been settled by the Royal Decree dated 27th August 1900.

If we consider the question of companies only, companies are everywhere allowed to possess land. They may be subjected to special taxes on the land they own, but this is a revenue question, not a legal question. As a general rule, a company formed as a corporate body can acquire land in the same way as a private person. It is worth noting that in the draft of the year 118 no restriction was imposed upon ordinary partnerships or limited partnerships as to the ownership of land. Still, limited partnerships may be constituted in such a way that they may have a quasi perpetual life, like companies.

Nevertheless, if the Government is of opinion that companies must not be allowed to possess land in Siam, I think that the limitation must be made a very strict one.

I would propose to forbid companies to acquire land for any purpose whatever, except such immovable properties as may be necessary for their offices, stores, factories, godowns, or other places where they carry on their trade or industry. I would forbid companies to acquire land for the purposes of investment, cultivation, plantation, building speculation, etc. If not, if the right of companies to acquire land is not strictly limited, the distinction between acquisitions allowed and acquisitions forbidden shall be extremely difficult to draw.

A number of abuses shall arise. Many companies shall be organized without whether they are legal institutions or not, and they will find themselves in a very unsatisfactory position.

But a strict limitation shall prevent a great number of companies from being formed or from carrying on properly their business. For instance if a company starts a business of rice milling, such company may buy the land which is necessary for erecting the mill and for the present business of the company, but although they do foresee that in another five or ten years they shall need more space, they would not be allowed to purchase from the beginning extra land for further developments.

Besides, Company would be allowed to bring new areas into cultivation by clearing waste land, digging canals, or turning jungle into plantation. No Company would be allowed to build houses or markets in towns, etc. The limitation may restrict the economical development of Siam and the introduction of foreign capital.

I would point here that the only way in which a company may acquire large tracts of land in Siam is to ask for a concession from the Government, and that the Government is always at liberty to refuse the whole or part of the area applied for. It is highly improbable that a company may acquire considerable estates from private individuals in Siam.

## II

Assuming that the Government be in favour of limiting the right of companies to own land, some provisions ought to be enacted to decide how the limitation shall be enforced.

If no provision is inserted in the law to that effect, the same question will be raised as was raised in connection with article 4 of the 1857 treaty with England.

The old treaty forbade English subjects to acquire land outside the 24 hours limits. Practically, a number of British subjects in the North were landowners "de facto". Some persons



expressed the opinion that when a British subject had purchased land contrary to law, any interested person could claim cancellation of such contract. Some other lawyers were of opinion that the provision in the Treaty was made for the sake of the Siamese Government only, and that such Government alone could enter an action for cancellation. The question was brought before the International Appeal Court and the Bangkok Appeal Court but it was not fully decided. Both Courts only gave judgment that a person who had purchased or acquired land contrary to the treaty had no title on which he could bring an action in court.

If companies are placed under restrictions as to ownership of land, the question cannot be left undecided. Suppose for instance a Company buys land and starts a rubber plantation believing in good faith that such acquisition is not contrary to law. Is it advisable that after five or ~~ten~~ years have elapsed the seller of the land or the Government may come in and ask for cancellation of the sale and for return of the land to the seller? If the value of the land has increased twenty times, what about that increase? Who shall benefit of it? Business questions of such importance cannot be left uncertain and undecided.

A similar point was raised in connection with the lands owned by the Roman Catholic church. It is decided as follows by article 16 of the Decree of the 27th August 1909 :

"All acquisitions made or maintained contrary to the provisions of art. 12, 13, 14 & 15 of the present decree shall be null and void. This nullity may be pronounced at any time on application of the Government, by the competent Court, which shall order the sale of the land by public auction. The proceeds of the sale, less deduction for costs and expenses, shall be paid to the Mission concerned."

I would advise the Government, if the right of Companies to hold land is restricted, to insert a provision of the same

May 26th 1919. -

## MEMORANDUM. -

Mr. Padoux, Legislative adviser  
to  
His Royal Highness Prince Rajburi,  
Minister of Justice.

The Code Commission has now finished that part of the draft civil and commercial Code which deals with Partnerships and Companies.

The draft provisions are partly taken out of a draft act titled "The Law of Siamese Partnerships and Companies" which was prepared by the advisers of the Government in the year 119.

In this draft, there is a section 53 which runs as follows:  
"Section 53. - No Company is allowed to purchase in Siam lands, houses or other buildings, otherwise than for the purpose of managing, conducting and carrying on the business of the Company. No lands, houses or other buildings may be purchased so as to be in any manner made instrumental for the purposes of trade or speculation. When a Company purchases any property, consisting in lands, houses or other buildings, notice in writing thereof is to be given to the Minister of Finance within three months <sup>from</sup> the purchase."

The said provision has been incorporated in our draft where it reads:

"Section 110. - No limited company is allowed to acquire in Siam lands, houses or other immoveable properties otherwise than for the purpose of managing, conducting and carrying on the business of the company. No lands, houses or other buildings may be acquired or owned for the purposes of trade or speculation. When a company acquires any property, consisting in lands, houses or other immoveable properties, notice in writing thereof must be given to the Minister of Finance within three months from the acquisition."

The first provision was probably inserted in the draft not with a view of limiting the extension of mortmain in Siam, but of preventing foreigners from acquiring, through companies formed by them under Siamese law, immovable property which the treaties did not allow them to acquire personally.

The second motive has lost most of its importance, since French Asiatic subjects and British subjects have now the right to possess land. The question of whether companies shall be allowed to own land or not is not any more connected with foreign policy. It is a matter of internal policy, and the rule to be adopted shall be the same whether the shareholders company are Siamese subjects *or foreign subjects*.

But the first motive (question of mortmain) is still worth consideration.

The Code Commission have therefore examined the question and they have come to the conclusion that if the principle laid down in the original section 53 is to be maintained, some alterations ought to be introduced in its present wording.

# I

The first point is to clearly define which acquisitions of land are permitted by law, which are forbidde.

The draft allows a company to acquire the lands or buildings which are necessary for the purpose of managing, conducting and carrying on the business of the company. But no land may be purchased so as to be in any manner made instrumental for the purposes of trade or speculation.

Thus for instance a Steamship company may own the lands and buildings which are necessary for its offices, landing places and godowns. A Banking company may own a building for its offices and its director, etc. In such cases, the land is owned for the purpose of managing the business of the company.



On the contrary, a company cannot acquire land in order to resell it afterwards, because it would be land speculation, and land cannot be purchased for the purposes of speculation. A company like the "Siam Canals and Irrigation Co" could not be formed under Section 53 of the original draft Law on Companies.

But take for instance a Rubber Company. For the purpose of conducting its business, such company must acquire land and plant it. But plantation of rubber trees may be considered as making the land "instrumental for the purposes of trade". Shall we therefore consider that a Rubber Co or any other similar Co cannot be formed in Siam?

If the words "purposes of trade or speculation" are to be construed as simply meaning "trade in land", or "buying land in order to resell it", then a Rubber Co could be authorized. But what about the principle of restricting mortmain? The general idea about mortmain is to prevent juristic persons to acquire land, because juristic persons always keep the land they acquire and since their duration exceeds the duration of the life of several successive human generations, the land they own is practically withdrawn from economical and commercial circulation. Now if the words "purposes of trade or speculation" are construed as meaning "buying and selling land", then the companies which propose to acquire land in order to resell it, that is to say companies which do not propose to keep mortmain land, shall not be allowed, but companies who propose to acquire land in order to keep it and work on it, that is to say who propose to <sup>on the contrary</sup> form mortmain land, shall be allowed. If the words "purposes of trade and speculation" are construed in a wider way, then a company shall not be allowed to carry on any trade or business connected with land.

It seems therefore that the Government ought to consider the question whether companies formed under the Siam law shall be allowed to own land or not, and, in case they should

not be allowed, to decide which exceptions may be admitted.

Personally, I am not in favour of restricting the right of ownership of companies. The question of mortmain has never had any importance in Europe except in connection with the Roman Catholic Church and with convents, monasteries and other religious congregations. But watts, churches and religious congregations have nothing to do with companies. If their right of owning land must be restricted, that is to be decided in other laws or in other parts of the Code. Meanwhile, with regard to the Roman Catholic Church in Siam, the question has been settled by the Royal Decree dated 27th August 1909.

If we consider the question of companies only, companies are everywhere allowed to possess land. They may be submitted to special taxes on the land they own, but this is a revenue question, not a legal question. As a general rule, a company formed as a corporate body can acquire land in the same way as a private person. It is worth noting that in the draft of the year 119 no restriction was imposed upon ordinary partnerships or limited partnerships as to the ownership of land. Still, limited partnerships may be constituted in such a way that they may have a quasi perpetual life, like companies.

Nevertheless, if the Government is of opinion that companies must not be allowed to possess land in Siam, I think that the limitation must be made a very strict one.

I would propose to forbid companies to acquire land for any purpose whatever, except such immoveable properties as may be necessary for their offices, stores, factories, godowns, or other places where they carry on their trade or industry. I would forbid companies to acquire land for the purposes of investment, cultivation, plantation, building speculation, etc. If not, if the right of companies to acquire land is not strictly limited, the distinction between acquisitions allowed and acquisitions forbidden shall be extremely difficult to draw.

subject in the North were indicated



A number of cases shall arise. Many companies shall be uncertain whether they are lawful landowners or not, and they will find themselves in a very unsatisfactory position.

But a strict limitation shall prevent a great number of companies from being formed or from carrying on properly their business. For instance if a company starts a business of rice milling, such company may buy the land which is necessary for erecting the mill and for the present business of the company, but although it can foresee that in another five or ten years they shall need more space, they would not be allowed to purchase from the beginning extra land for further developments.

Besides, no company would be allowed to bring new areas into cultivation by clearing waste land, digging canals, or turning jungle into plantation. No company would be allowed to build houses or markets in towns, etc. The limitation may restrict the economical development of Siam and the introduction of foreign capital.

I would point here that the only way in which a company may acquire large tracts of land in Siam is to ask for a concession from the Government, and that the Government is always at liberty to refuse the whole or part of the area applied for. It is highly improbable that a company may acquire considerable estates from private individuals in Siam.

## II

Assuming that the Government be in favour of limiting the right of companies to own land, some provisions ought to be enacted to decide how the limitation shall be enforced.

If no provision is inserted in the law to that effect, the same question will be raised as was raised in connection with article 4 of the 1855 treaty with England.

The old treaty forbade English subjects to acquire land outside the 24 hours limits. Practically, a number of British subjects in the North were landowners "de facto". Some persons

expressed the opinion that when a British subject had purchased land contrary to law, any interested person could claim cancellation of such contract. Some other lawyers were of opinion that the provision in the Treaty was made for the sake of the Siamese Government only, and that such Government alone could enter an action for cancellation. The question was brought before the International Appeal Court and the Bangkok Appeal Court but it was not fully decided. Both Courts only gave judgment that a person who had purchased or acquired land contrary to the treaty had no title on which he could bring an action in Court.

If companies are placed under restrictions as to ownership of land, the question cannot be left undecided. Suppose for instance a Company buys land and starts a rubber plantation believing in good faith that such acquisition is not contrary to law. Is it admissible that after five or ~~less~~ years have elapsed the seller of the land or the Government may come in and ask for cancellation of the sale and for return of the land to the seller? If the value of the land has increased twenty times, what about that increase? Who shall benefit of it? Business questions of such importance cannot be left uncertain and undecided.

A similar point was raised in connection with the lands owned by the Roman Catholic Church. It is decided as follows by article 16 of the Decree of the 27th August 1909 :

"All acquisitions made or maintained contrary to the provisions of art. 12, 13, 14 & 15 of the present decree shall be null and void. This nullity may be pronounced at any time on application of the Government, by the competent Court, which shall order the sale of the land by public auction. The proceeds of the sale, less deduction for costs and expenses, shall be paid to the Mission concerned."

I would advise the Government, if the right of Companies to hold land is restricted, to insert a provision of the same

BANGKOK, 26/5. 1960

Dear Mr. Padoux

I have been through  
the Bills of Exchange Act  
and beg to give you  
enclosed my views  
as to some points  
that to my opinion  
do not seem to be  
quite clear & explicit.

Yours faithfully  
H. Hoel

W. Hoel  
S. Hoel

Observations of M. Hoff, Manager Lion Credit Bank

26 Jan 1910

- Section 12.) It might be mentioned that whenever an allonge is attached to a bill, the first indorsement on the allonge is partly written on the bill itself & partly on the allonge (to avoid fraud).
- 57.) Is the date necessary to make the indorsement valid?
- 58.) 'protest' must this protest be drawn up by a public notary or will it be sufficient for the holder of the bill to merely write this notice himself?
- 60.) To my opinion the holder will get from the P.O. only a receipt for a registered letter unless the contents of the letter are shown to the P.O. - which could not very well be done.
- 63.) "the date of the protest" cannot be given in cases where section 62 comes into application. It might therefore be added: "or the date of refusal of acceptance".
- 64.) might add the reason why the bill is not accepted.
- 70.) might be added: The holder of an unaccepted bill of exchange etc.
- 74.) It is not clearly stated whether the drawer has first to refuse acceptance before the acceptor for honor comes in and if it has to be protested in that case.
- 77.) It might be added .. and indication that it is an acceptance for honor.



subsection 2 art 80) to present the dishonored bill for payment.

3 art 80.) proper limit of time means according to sect. 58 the pendency of the protest on the day following the day of presentation. Is it sufficient to simply send the notice of protest and then present the bill to the acceptor for honor or must the notice be in the hands of the drawee before the bill is presented to the acceptor for honor? If so the time allowance for protesting and presenting to the acceptor for honor will not be sufficient.

sect. 105.) same remarks as to sect. 60.

107) " " " " 62.

115.) add: unpaid bill of exchange.

126.) The holder must have the fact of the protest for honor entered in the receipt of the protest for non payment etc.

The sections preceding do not mention that a protest has to be made out in a case where a bill is paid by a payer for honor.

Promissory Notes: Does section 28 be applied to promissory notes? (sect. 155.) "the drawer of a crossed cheque must make payment to a bank only". Does this mean that the drawee can only make pay in cash a crossed cheque to a bank? or can the bank's account only be credited in the drawee's books?



Observations of Mr. Kock, Manager Siam  
Commercial Bank.

-:-:-:-

26th. May 1910.

- Section 12. It might be mentioned that whenever an allonge is attached to a bill, the first indorsement on the allonge is partly written on the bill itself and partly on the allonge (to avoid fraud).
- Section 34. Is the date necessary to make the indorsement valid?
- Section 58. "Protest". Must this protest be drawn up by a public notary or will it be sufficient for the holder of the bill to merely write this notice himself?
- Section 60. To my opinion the holder will get from the Post Office only a receipt for a registered letter unless the contents of the letter are shown to the Post Office, which could not very well be done.
- Section 63. "The date of the protest" cannot be given in cases where section 62 comes into appliance; it might therefore be added: "or the date

of refusal of acceptance".

Section 82. Might add the reason why the bill is not accepted?

Section 70. Might be added: The holder of an "Unaccepted" Bill of Exchange etc

Section 74. It is not clearly stated whether the drawee has first to refuse acceptance before the acceptor for honour comes in and if it has to be protested in that case.

*no. section  
if the drawee has/should =*

Section 77. It might be added: and indication that it is an acceptance for honour.

*unnecessary.*

Section 80. Subsection 2.

To present the "dishonoured" Bill for payment.

Section 80. Subsection 3.

Proper limit of time means according to section 58 the sending of the protest on the day following the day of presentation. It is sufficient to simply send the notice of protest and then present the bill to the acceptor for honour or must the notice be in the hands of the drawee before the bill is presented to the acceptor for honour? If so the time allowance for pre



**ต้นฉบับไม่มีหน้านี้**

**NO THIS PAGE IN ORIGINAL**

May 28th. 1910.

Memorandum.

Mr. Padoux, Legislative Advisor

to

His Royal Highness Prince Rajburi, Minister of Justice.

On the 18th. of December 1909 I have submitted to Your Royal Highness a memorandum concerning the Codification of Criminal Procedure.

In that memorandum several important points about Procedure were examined which, in my opinion, ought to be decided by the Government before the Code Commission may start compiling a proper draft.

If the Ministry of Justice is anxious that something be done for the Criminal Procedure Code before the Commission goes on leave that is to say before April or May 1911, the question raised in the said memorandum ought to be discussed without delay.

June 1st  
~~July 28th~~ 1910

Dear Mr. Koch

I thank you very much for the note you have sent about the map - act on shell, of exchange. &

The several points raised by you will be carefully examined by the Cde Commission. I will let you know in time which alterations we might ~~propose~~ propose to meet your wishes.

Truly yours.



5 มิถุนายน ๒๕๒๓ ๑/๑๐

๒/ 257

ที่ ๑/๕๐/๕



ได้แจ้งแก่ผู้มาราชการทุกวันนี้ไม่มารับราชการตามเวลา คือเช้า ๔ โมง  
ตรง ตั้งแต่วันที่ได้รับคำสั่งนี้ต่อไป ให้ข้าราชการมารับราชการตาม  
เวลาอย่างเก่าให้เป็นอันขาด และให้หัวหน้าแผนกทุกแผนก และอธิบดี  
ศาลทุกศาลในกรุงเทพฯ มีรายงานบอกชื่อข้าราชการที่ขอลาป่วยมา  
รับราชการส่งรองเสนาบดีให้ทราบภายในเช้า ๕ โมง

กระทรวงยุติธรรม

วันที่ ๕ มิถุนายนรัตนโกสินทรศก ๒๕๒๓

*[Signature]*

ค.ม.พ.  
น.ท.

N: 1. / 579

Le Prince Charoon ayant remarqué aujourd'hui même que beaucoup de fonctionnaires du Ministère n'étaient pas arrivés aux Palais de justice en temps voulu - c'est à dire à dix heures du matin, recommande à tous les fonctionnaires du Ministère de la Justice d'être plus ponctuels dorénavant, et ordonne à tous les chefs de service et Présidents de cour à Bangkok, de noter le nom des fonctionnaires en retard et d'en envoyer la liste au Ministère à onze heures du matin.

Ministère de la Justice

4 juin 129.

( Signé ? ~~Charoon~~ ) .

Bangkok, June 7th 1910.

Dear Mr. Larson,

The Code Commission are at present considering the part of the Civil Code concerning "Associations", that is to say societies formed for charitable, literary, scientific sports or other such purposes.

These societies are actually governed by the provisions of the Secret Society Act of the year 1897.

Could you kindly let me know whether the said provisions are really put into force, that is to say if the various clubs and other societies of Bangkok have applied for registration by sending a copy of their regulations, list of members, etc. (section 3); if they give 24 hours notice of their meetings to the registering officer (section II); etc.

In case the provisions of the Act are regularly complied with, I would like very much to have a copy of the statutes deposited by the most important of such societies.

I do not need to add that I intend to submit to the Minister of Justice the whole question of the system to be adopted for the registration of societies before any definite proposals be made by the Code Commission. I suppose that my notes to the Minister will be communicated to the Local Government.

Truly yours,

**ต้นฉบับไม่มีหน้านี้**

**NO THIS PAGE IN ORIGINAL**

June 10th. 1910

Dear Prince Sithiporn,

The Code Commission being at present engaged in the compilation of that part of the Civil Code which shall deal with Companies would like to consult and compare as many as possible of the Royal Charters and articles of association of the Companies formed in Bangkok under Siamese law. Could you kindly help me in getting some of them ? I know that the Charters were prepared by the General Adviser. Perhaps you may find some in your office.

Thanking you in anticipation, I remain, dear Prince,

Sincerely yours



Bangkok, June 10th. 1910

My dear M. Padoux,

The registration sections of the Secret Society law are nominally in force but there are only four societies registered and of those, one, the Chinese Japanese Chamber of Commerce exists only in name there being now no membership, no directorate, and no office. Of the other three, two are benevolent societies and the third is a social club. This last also appears to be in a very somnolent condition and I doubt if it has now any actual existence. The sections of the law are not really enforced because it has been the policy of Government to discourage registration.

There are four applications from societies pending now, some of which have been pending a very long time.

The registered societies that have an active existence report their meetings etc. I will let you have a copy of the statutes of any one of these eight Societies if you will let me know which you want. The names are as follows :-

Registered  
-:-:-:-:-

1. Barum-mor-haidar. A Mussalman society for providing burial to pauper Mohammedans.
2. Tang-Ah-Sieng-Boq alias Chinese Japanese Chamber of Commerce. Has no active existence.

maude  
11. 6. 09



**ต้นฉบับไม่มีหน้านี้**

**NO THIS PAGE IN ORIGINAL**



กระทรวงเกษตรและสหกรณ์

١٢

วันที่ ๑ มิถุนายน ๒๕๖๓

แห่งความมายั่ง มองซิเคาร์บิฮาดู กรมการร่างกฎหมาย

- หนังสือลงวันที่ ๑๐ เดือนนี้ของมี: ระสงค์หนังสือประกาศ

พระราชทานอำนาจพิเศษแก่ข้อบังคับบริษัทต่าง ๆ มาตราวินิจฉัย  
สำหรับการร่างกฎหมายขึ้นส่วนแต่บริษัทนั้นทรงจำแล้ว

ได้ส่งประกาศกระทรวงมหาดไทยและยังฉบับวิธี  
ต่าง ๆ ซึ่งได้จดทะเบียนไว้รวม ๒๑ เกมหรือฉบับมายังท่าน  
พร้อมกับหนังสือนี้แล้ว

โดยโอกาสนี้ ขอแสดงความนับถือมายังท่านด้วย

นายสุวิทย์ วัฒนศิริ

ปลัดทูลฉลองกระทรวงเกษตรและสหกรณ์

2. Incorporation (State)

ไทย พิมพ์  
๑. ๗.

N° 15/4619.

Ministère de l'Agriculture  
Le 14 juin 129.À M<sup>r</sup> Padoux, Président de la Commission de  
Codification.

Par votre lettre du 10 de ce mois vous m'avez demandé de vous faire parvenir les chartes d'incorporation et les statuts des diverses Compagnies existant à Bangkok - en vue de la rédaction de la loi nouvelle sur les "Sociétés".

Je me empresse de vous envoyer les dits documents, en tout vingt-et-une pièces.

Je saisis cette occasion pour - etc...

Phya ...

Sous Secrétaire d'Etat au Ministère  
de l'Agriculture

Office of the General Adviser,  
Bangkok, 14 th June 1910.

Dear Mr Padoux,

I have duly received your letter of the 10th instant, and beg to send in accordance with your request the ~~following~~ Charters and Articles of Association *of the following Companies*

Siamese Tramway Co. Ltd.

Meklong Railway.

Siam Commercial Bank.

Menam Motor Boat Co.

I also send the form of Charter for a Bank as drawn up by Mr Westengard.

The Charter of operative Companies generally follows that of the Transport Co Motor. I ~~request~~ <sup>regret</sup> that I have not got it at hand in the Office because Fhya Boriraks is working on it in connection with a new steam launch Co., but I will send it on as soon as possible.

I also send the file of papers in connection with the Chino-Siamese Steamship Co. Ltd., with the hope that it might prove of some use to you.

Besides the above Co. there are of course many others, and I believe copies of their Charter etc can be obtained from their offices.

We have not got them in the office as they follow the lines of the standard form.

If I <sup>be</sup> <sup>be</sup> can of further service in any way,

you



you can always call me up on the telephone,  
and I will go across to see you.

Believe me

Yours sincerely,

*Sithiporn*

June 15th 1910

Dear Mr. Koch

The Code Commission being  
at present engaged in drafting the  
~~provisions for~~ <sup>the</sup> ~~company~~ part of the law of  
Commercial code <sup>which shall</sup> ~~concerning~~ limited  
companies, ~~Disregarding~~ <sup>the</sup> members would  
like to consult the ~~documents~~ <sup>documents</sup> ~~of the~~  
~~and articles of association~~ <sup>of the</sup> ~~of the~~ principal  
companies <sup>formed</sup> ~~existing~~ in Bangkok under  
Siamese law.

May I ask you to be so kind as  
to let me have two <sup>English</sup> ~~copies~~ of the Charter,  
Memorandum of association and articles of  
association of the Siam Commercial  
Bank?

Apologizing for the trouble, I remain,  
Dear Mr. Koch,

Truly yours

W. S. Grant

Dear Sir  
the Siam Railway Co and of the Siam  
Motor Boat Co.

J. Mackay

Dear Sir. Mackay  
the Mekong Railway Co

## The Siam Commercial Bank, Ltd

Telegraphic Address  
„Siambank“

Bangkok

1916. 18

Sir Mr. Pados

I am in receipt of  
 your letter of yesterday.  
 I am now to hand  
 you herewith two copies  
 each of the Charter and  
 Memorandum & Articles  
 of Association of the Siam  
 Commercial Bank Ltd, as  
 desired.

Truly Yours  
 J. H. H. H. H.

June 15th 1910

Dear Prince Lichaporn

I thank you very much for  
the documents which you sent me  
yesterday.

~~These papers~~ I  
must have copies of some of them made, as  
soon as they are finished, I shall return to  
you the whole file

Believe me; dear Prince,  
Sincerely yours

OFFICE OF THE FINANCIAL ADVISER.

BANGKOK, SIAM.

DATED 15<sup>th</sup> June 1910

Dear Mr. Padua.

Very many thanks  
for your letter which I  
have just received, with  
the copy of the draft  
provisions concerning Bills.

Yours faithfully  
O. H. L. S.



16 June 1910

Koch, Esq.

Dear Sir,

I beg to acknowledge receipt  
with thanks of your letter of to-day  
kindly sending copies of the Charter, Memorandum  
and articles of association of the Lian  
Commercial Bank

Truly yours

L. Grant, Esq.

Lian Commercial Bank. Co. of the Lian  
Mota Road Co.

Siam Electricity Co. Ltd.

BANGKOK

Bangkok, the 18th. June 1920

G. Padoux, Esq.

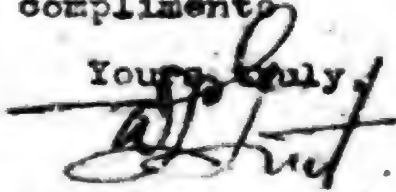
Present.

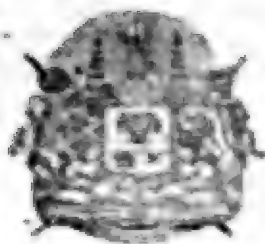
Dear Sir,

I send you herewith 2 copies each of the English version of the Memorandum and Articles of Association of the Siamese Tramway Co. and of the Menam Motor Boat Co., Ltd. also 2 English copies of Charter of Menam Motor Boat Co., and 2 Siamese copies of Charter of Siamese Tramway Co. Sorry we have no English translation of the S.T.Co. Charter.

With compliments

Yours truly,





OFFICE OF THE GOVERNMENT MARINE SURVEYOR

Harbour Department.

Dunedin 17<sup>th</sup> June 1902

Dear Mr. Padoux

In response to your letter of 15<sup>th</sup> inst I have pleasure in forwarding herewith two copies of the Memorandum & Articles of Association and two copies of the Royal Charter in English of the New Zealand Railway Co Ltd

With kind regards.

Yours sincerely

J. Mackay

June 18<sup>th</sup> 1910

Dear Prince Abhiporn

I beg to return the  
 charters and other documents which  
 you kindly sent me on the 14<sup>th</sup>. inst.

Could you let me have the  
 English draft charter of the Sino-  
 Siam Steamship Co. I remember you  
 had it in your file when we spoke  
 about the claims of Yee Ho Hong  
 against Eka Sanyakarn in connection  
 with the working of the said Co.

The charter of the Sino Siam  
 Steamship Co has a provision about  
 inspection by Government to which I  
 would like to refer.

Believe me, Dear Prince,  
 Faithfully yours

June 18th 1910

Dear Mr. Mackay

I beg to acknowledge receipt with  
thanks of your letter of yesterday  
forwarding copies of the Charter and  
articles of association of the Melksham Railway.  
Very truly yours



June 30th 1910. ✓ 277

MEMORANDUM. -

---

Mr. Padoux, legislative adviser.

to

His Royal Highness Prince Rajburi, Minister of Justice. -

---

ASSOCIATIONS IN SIAM. -

---

I. - Legal position of associations in Siam.

All modern Codes have special provisions concerning the contract of association, as distinct from the contract of Partnership or Company.

Partnerships and Companies are those Societies which are formed with a view of sharing profits.

Associations are Societies formed without view of sharing profits. They are usually made for charitable, religious, scientific, artistic, literary, or other such purposes.

Associations are at present governed in Siam by the Secret Society Act of the 1st October 116 (1897) by sections 177 to 182 of the Penal Code.

The Secret Society Act of the year 1897 was originally intended to govern every kind of associations, lawful associations as well as secret societies. But its provisions concerning secret societies have been repealed and replaced by sections 177 to 182 of the Penal Code. Then the Act of the year 116 although it is titled "Secret Societies Act", applies only now to non secret societies.

According to Art, 177 of the Penal Code, a secret society

is "an association the proceedings of which are secret and the object of which is unlawful". Sections 177 to 188 of the Code provide proper penalties for the members or chiefs of such societies. In civil law, it is unnecessary to have provisions about Secret Societies. Since the object of such societies is unlawful, the contract formed between their members is invalid and can have no effect. The draft Civil Code has not therefore to deal with the societies the proceedings of which are secret and the object unlawful.

With regard to the societies the proceedings of which are open and the object of which is lawful, they are governed by the following provisions of the Secret Society act:

According to article 3, every association must be registered. The application for registration must contain the regulations of the association, the list of the members and the list of the places where the association may meet.

No registered association can hold a meeting unless 24 hours notice thereof has been given to the registration office.

The Registering Officer and the Police have the right to be present at such meeting. The Registering Officer has also power to summon the managers or members of every association and to examine them in connection with the working of the association.

Penalties are provided for non registration and for other offences against the act.

So far as I know, the Act has been enforced in a desultory way. Very few associations are registered. The majority are not. The British Associations, which are under Siamese legislation since 1906, do not seem to have complied with the act. It does not appear that the provision concerning notices of meetings was ever carried out by the registered associations.

Several Associations <sup>have</sup> applied for registration, but their applications were not answered. It looks as if the responsible Ministry would consider that the Registering Officer can refuse

an application if he thinks fit, although the association is formed in compliance with law and the application contains all the particulars required by the Secret Society Act. In other words, the Ministry construes the expression "registration" as if it meant "authorization". I doubt very much whether such construction is admissible and whether members of an association which has made an application for registration in conformity with law may be considered as members of a secret society and punished as such. To declare that associations are subject to registration would mean everywhere that every association can get registered as a matter of right, provided it complies with the requirements of the law. It would not mean that associations are subject to previous authorization. I can quite understand, of course, that the Siamese Government be in favour of a system of authorization, rather than of a system of registration. But if it is so, it would be safer to state it clearly in the Code rather than to try to work out a system of registration as if it was a system of authorization.

II. - The various legal systems concerning Association

The various legal systems concerning associations range from absolute freedom to strict restriction; they may be divided into four principal categories, the characteristics of which are as follows:

1st system. - Every association is constituted as a legal person as soon as it is formed between the members. No declaration or registration is necessary.

2nd system. - Every association is constituted as a legal person as soon as it is formed by the members; but unless it is registered the association has only a restricted personality. The association is not allowed to sue in Court, to own land, or to possess more than the amount of the annual contributions of its members.

3rd system. - Associations are not formed unless registered, but registration cannot be refused.



4th system. - Associations are subject to previous authorization to be obtained from the Government.

The first system is the most simple. If it was adopted in Siam, then no societies would be unlawful except secret societies described in Sections 177 and following of the Penal Code. But the system of absolute freedom may lead to a certain number of legal difficulties: the nature or existence of non registered associations being always open to discussion. Besides, the system may prove inconvenient from the political point of view, since it gives to the Government no control over the associations.

The second system is not a commendable one. It seems inconsistent to grant to a body the civil personality <sup>(and to refuse it to the same and not personality)</sup>. In fact, associations with limited personality are very often induced to act ultra vires; for instance, an association will accept a gift from a member or from an outside person. The Government cannot control the working of all the associations and enter an action against every association acting ultra vires. The result is that associations may remain for years and years in existence although they are in an illegal position, thus weakening the effect of the law.

The third and fourth systems (compulsory registration or previous authorization) are ~~the most simple and the most~~ <sup>more</sup> easy to enforce.

### III. - Foreign legislation. -

In Germany, all associations are subject to registration. Registration cannot be refused when the conditions required by law are complied with. Registered associations enjoy the same civil rights as natural persons. They can be dissolved by Court ~~by~~ the request of the Government if their object becomes unlawful.

France has adopted the system of non compulsory registration. But French legislation on the subject is principally directed against religious congregations. It cannot be taken as a model.

In Switzerland, associations are formed by mere agreement between members. But they have not full civil rights. To get such rights, they must be registered at the office for registration of Partnerships and Companies.

In Japan, association not having as their object the making of profits cannot be formed unless authorized by the Government.

#### IV. - Provisions for the draft Civil Code.

Before preparing a formal draft of the title of the civil Code concerning Associations, the Code Commission would like to know what are the views of the Government on the subject.

In order to make the question clearer, we have compiled the annexed provisions, in which all points of importance are referred. The system in these provisions is the system of compulsory registration, not authorization.

From the legal point of view, the system of compulsory registration is the simplest. No association is valid unless registered. Registration cannot be refused if the other requirements of law are complied with. All registered associations have the same rights and enjoy the same civil personality. The conditions imposed upon the associations with regard to registration are very moderate. Registration does not impose any hardship on an association. Therefore members of an association having a lawful object have no reasonable ground to refuse to apply for registration. If they do not register and are prosecuted, they cannot complain. The enforcement of the law is not therefore likely to cause any friction.

On the other hand, the Government is informed of the existence every association and can keep in constant touch with it.

The policy of discouraging associations and obstructing their registration is a dangerous one. If by obstructing registration a Government could prevent people from forming associations, the system might be commendable. But in fact when the law is calculated to discourage associations, people will not



cease to associate. They will continue to form associations, and being prevented from forming open associations, they will form secret societies, to the detriment of public peace. When associations are registered, the Government may exercise a good deal of useful action through their heads, whilst secret societies are generally opposed to the Government. The best policy would be to turn people out of secret societies and bring them to lawful societies. But it cannot be done unless the Government allows lawful societies to exist.

If the information which I could procure are correct, there are only four registered associations in Bangkok, a town numbering more than 800,000 inhabitants. The Bangkok Directory for 1910 contains a list of about twenty Siamese or foreign associations the largest number of which are undoubtedly unlawful, although they have been openly in existence for several years and some of their members rank high in the Government. It is doubtful whether the system which leads to such a condition of affairs is a sound one.

**THE OFFICE LONDON**

## Results

2000

**Abstract**

2000

Figure 1

5. *Journal of the American Medical Association*, 1991; 265: 1075-1078.

ENTS FOR LLOYD AT

## BANGKOK AND SARAWAK.

G. Padoux Esqr.

**Ministry of Justice.**

B A N G K O K .

Dear Mr. Padoux,

I return herewith the copy of your draft code relating to Bills of Exchange, Promissory Notes and Cheques which you were good enough to leave with me sometime ago.

So far as I can judge it seems clearly and simply drawn up, and well suited for the needs and conditions of business as carried on in Bangkok.

With many apologies for keeping the draft so long.

I am,

Yours faithfully,

Mr. Edrø

July 4th. 1910.

Dear Mr. Barlow,

Do you think that you may let me have seen your observation about the draft provisions concerning Bill of Exchange, a copy of which I left with you in May?

I already received answers from the Siam Commercial Bank and the Banque de l'Indo-chine. It would help us very much if we could have your opinion before the draft is submitted to the Siam Government.

I have the honour to remain

Truly yours.

July 5<sup>th</sup> 10

Dear Mr. Padonci

I am rather busy  
at present with our half  
yearly balances but will  
send you in my notes  
early next week

Yours sincerely  
Arthur

July 7th. 1910

Dear Mr. Thompson

The Banque de l'Inde-Chine and Siam Commercial Bank have sent in their observations on the draft provisions concerning Bills. I hear from Mr. Barlow that he will forward his opinion next week. May I hope that you will be able to let us know of your views in about the same time ?. The matter is becoming more pressing.

Apologising for the trouble, I remain, dear Mr. Thompson,

Truly yours.



THE CHARTERED BANK  
OF I.A.&C.  
BANGKOK.

7<sup>th</sup> July 1910

Dear Mr Pandon

Just

received your letter &  
will try to send in  
my opinion next  
week, but work  
at the end of the half  
year is very pressing  
for a time

Yours truly

Harbman

July 1910

Memorandum

Mr. Pateux, Legislative advisor  
to

His Highness Prince Chareon, Minister of Justice

In the course of their work on specific contracts, the Code Commission had to consider that peculiar Siamese agreement which is commonly called contract of debt services, a contract whereby the debt master agrees to lend a certain sum to the debt servant, and the debt servant agrees to work for the debt master until the debt is extinguished.

The Code Commission have codified the existing statutes and case law on the subject, and they have tried, so far as possible, to avoid provisions which would have more or less assimilated debt servant servants to slaves

But whatever precautions may be taken, it is evident that a contract of debt services cannot be carried out unless the master is given some means of coercion against the servant in order to compel him to do this work.

On the other hand, there is very little difference between compulsory labour and slave labour

The question comes then whether it is advisable to include the contract of debt services into the future Civil Code, or not.

My personal impression is this:

If the Siamese Government consider that under the present conditions of things it is necess-

-ary, and it shall be necessary for years to come to have contracts of debt services, for benefit of both masters and servants, then let the contract of debt services be dealt with in the Code, since the Code must include all contracts usually made in Siam.

But if the Government consider that the system is an old fashioned one, which is gradually disappearing and must be abandoned in the near future then better omit it in the draft Code and let it be governed by the existing laws and jurisprudence.

I hope that in another two or three weeks we may begin the printing of the whole draft concerning obligations and specific contracts. I would be glad to know whether I must include "debt services" in it or not.

II July 1910. -

MEMORANDUM. -

Mr. Padoux, Legislative adviser

to

His Highness Prince Charoon, Minister of Justice.

A large part of the draft Civil and Commercial Code shall be ready in a few weeks. It will include the whole matter of obligations, that is to say the general provisions concerning origin, nature, effects, transfer and extinction of obligations, and the provisions concerning specific contracts such as Sale, Hire, Loan, Pledge, Partnership, Companies, Bills of Exchange, etc.

The general part may contain about 350 Sections. The part concerning specific contracts shall extend over about 1050 sections, the total being about 1400 Sections.

In my original propositions relating to the Code Commission, I had suggested that the draft be revised from time to time by a mixed Commission including Siamese lawyers, as the work of the European members proceeds. I was thinking at that time that once a certain number of sections are ready we would examine them together with the Siamese members, and the translation of the propositions adopted would have been made by the Siamese members themselves, after each sitting of the mixed Commission.

Since then, your Highness has informed me that the Ministry of Justice could not at present spare a sufficient number of able men as members of the mixed Commission. It was decided therefore that up to further order the European advisers should proceed alone with the work.

The Civil and Commercial Code shall consist of five parts:

1. - General Provisions.
2. - Persons.
3. - Things.
4. - Obligations.
5. - Inheritance & wills.

Your Highness knows that the Commission has begun work with the 4th part, partly because there was a possibility of that part being enacted first, and partly because it was the easiest part to undertake for the new members of the Commission. Anyway, that 4th part is now being finished and I hope that in August we may begin to codify the provisions concerning persons and family. For the following reasons, it seems unadvisable to proceed further without having a translation of the part concerning obligations made:

1. - If we wait till the whole draft is finished, there will be more than 3000 sections to translate, that is to say nine times the Penal Code. You know that it took about one year to have the text of the Penal Code translated and the translation revised. How long shall the translation of a Civil Code of 3000 sections last?

2. - I am afraid that translators, however able they are, if entrusted with the translation of such a number of provisions, shall feel absolutely discouraged.

3. - If we wait till the European advisers have finished their task before making the translation, the Government shall be obliged to keep them waiting for months or years with very little to do, whilst the translation is going on, till the revision of the draft begins. That will mean a waste of money.

4. - If the several stages of the work of Codification, viz: compilation, correction, translation, revision, instead of being carried out simultaneously are carried out successively, the Codification shall last much longer than expected. For instance, if the translation of the obligations is under



taken now, when it is finished the part concerning Persons may be ready for translation; when the part concerning Persons is translated, the part concerning Things may be ready, etc. In the mean time, a first revision of the part concerning Obligations may be carried out whilst the part concerning Property is being translated, and so on. Thus, when the draft of the last part is finished by the European advisers, the work on the preceding parts shall be sufficiently advanced to enable the Government to promulgate the whole Code in a comparatively short time. On the contrary, if the Government wait till 1912 before beginning the translation, the translation may take 18 months or more, then the revision shall take say another 18 months, and the Civil Code shall not be enacted before 1913 or 1916. To say nothing of the Code of Criminal Procedure, Code of Civil Procedure and Law of organization of Justice.

5. - The draft on Obligations having <sup>been</sup> made by the European advisers alone, there are in it a great many points on which they must consult with Siamese lawyers. A full translation of the draft is necessary to enable us to ask for their opinion. I might add that if these points are not discussed and decided in a rather short time, the progress of the work on the other parts of the Code may be delayed, because several leading rules concerning Persons and Things depend on the decisions to be taken in matters connected with obligations.

With regard to the way in which the translation shall be carried out, I am not competent to make any suggestion. However, I would like to call the attention of the Minister on two points:

I. - From what I have seen of the translation of the Penal Code, the main difficulty is to get the translator to find the exact meaning of the english text. Unless the translator is familiar with legal questions, he may understand perfectly

well the grammatical sense of an english provision and misunderstand at the same time its legal sense. When a Siamese translation of a draft law is being made, it is often necessary, instead of translating word per word, to substitute to a short english sentence a more developed and elaborate Siamese sentence. If the translator has not grasped the complete meaning of the english provision, there is a probability that the Siamese corresponding version shall be inaccurate. It is necessary therefore that the translator or translators should keep in constant touch with the members of the Code Commission in order to ascertain from them the true meaning of the english draft.

2. - For the same purpose, I would like that the Siamese translation be compared with the english text by a European adviser conversant with the Siamese language and with the Codification system. Of course, I do not think that a European advisers could correct a Siamese translation. But a young legal man having only a superficial knowledge of Siamese may ascertain whether the general sense of the provisions of the english draft has been understood or not. For instance, when the Penal Code was translated, the system of recidive provided in section 73 & 74 was not well understood. As a matter of fact, the present siamese provisions of Sections 73 & 74 do not correspond to the english draft. The difference was noticed and was mentioned to me by persons who had only a poor knowledge of Siamese. Those persons could not say how the english text ought to be translated, but they were able to notice mistranslations coming from a misunderstanding of the english text. I think therefore that an examination of both texts by one of the legal advisers of the Ministry of Justice might be very useful for ascertaining whether the siamese version corresponds to the english draft.

I the Ministry would consider the question of translation

now, and have the proper appointments made, the persons entrusted with the translation could start work as soon as the "Obligations" are printed.

11 July 1910. -

## M E M O R A N D U M . -

Mr. Padoux, Legislative adviser

to

His Highness Prince Charoon, Minister of Justice.

A large part of the draft Civil and Commercial Code shall be ready in a few weeks. It will include the whole matter of obligations, that is to say the general provisions concerning origin, nature, effects, transfer and extinction of obligations, and the provisions concerning specific contracts such as Sale, Hire, Loan, Pledge, Partnership, Companies, Bills of Exchange, etc.

The general part may contain about 850 Sections. The part concerning specific contracts shall extend over about 1050 sections, the total being about 1400 Sections.

In my original propositions relating to the Code Commission, I had suggested that the draft be revised from time to time by a mixed Commission including Siamese lawyers, as the work of the European members proceeds. I was thinking at that time that once a certain number of sections are ready we would examine them together with the Siamese members, and the translation of the propositions adopted would have been made by the Siamese members themselves, after each sitting of the mixed Commission.

Since then, your Highness has informed me that the Ministry of Justice could not at present spare a sufficient number of able men as members of the mixed Commission. It was decided therefore that up to further order the European advisers should proceed alone with the work.

The Civil and Commercial Code shall consist of five parts:



1. - General Provisions.
2. - Persons.
3. - Things.
4. - Obligations.
5. - Inheritance & wills.

Your Highness knows that the Commission has begun work with the 4th part, partly because there was a possibility of that part being enacted first, and partly because it was the easiest part to undertake for the new members of the Commission. Anyway, that 4th part is now being finished and I hope that in August we may begin to codify the provisions concerning persons and family. For the following reasons, it seems unadvisable to proceed further without having a translation of the part concerning obligations made:

1. - If we wait till the whole draft is finished, there will be more than 3000 sections to translate, that is to say nine times the Penal Code. You know that it took about one year to have the text of the Penal Code translated and the translation revised. How long shall the translation of a Civil Code of 3000 sections last?

2. - I am afraid that translators, however able they are, if entrusted with the translation of such a number of provisions, shall feel absolutely discouraged.

3. - If we wait till the European advisers have finished their task before making the translation, the Government shall be obliged to keep them waiting for months or years with very little to do, whilst the translation is going on, till the revision of the draft begins. That will mean a waste of money.

4. - If the several stages of the work of Codification, viz: compilation, correction, translation, revision, instead of being carried out simultaneously are carried out successively, the Codification shall last much longer than expected. For instance, if the translation of the obligations is under



taken now, when it is finished the part concerning Persons may be ready for translation; when the part concerning Persons is translated, the part concerning Things may be ready, etc. In the mean time, a first revision of the part concerning Obligations may be carried out whilst the part concerning Property is being translated, and so on. Thus, when the draft of the last part is finished by the European advisers, the work on the preceding parts shall be sufficiently advanced to enable the Government to promulgate the whole Code in a comparatively short time. On the contrary, if the Government wait till 1918 before beginning the translation, the translation may take 18 months or more, then the revision shall take say another 18 months, and the Civil Code shall not be enacted before 1917 or 1918. To say nothing of the Code of Criminal Procedure, Code of Civil Procedure and Law of organisation of Justice.

5. - The draft on Obligations having <sup>been</sup> made by the European advisers alone, there are in it a great many points on which they must consult with Siamese lawyers. A full translation of the draft is necessary to enable us to ask for their opinion. I might add that if these points are not discussed and decided in a rather short time, the progress of the work on the other parts of the Code may be delayed, because several leading rules concerning Persons and Things depend on the decisions to be taken in matters connected with obligations.

With regard to the way in which the translation shall be carried out, I am not competent to make any suggestion. However, I would like to call the attention of the Minister on two points:

I. - From what I have seen of the translation of the Penal Code, the main difficulty is to get the translator to find the exact meaning of the english text. Unless the translator is familiar with legal questions, he may understand perfectly

well the grammatical sense of an english provision and misunderstand at the same time its legal sense. When a Siamese translation of a draft law is being made, it is often necessary, instead of translating word per word, to substitute to a short english sentence a more developed and elaborate Siamese sentence. If the translator has not grasped the complete meaning of the english provision, there is a probability that the Siamese corresponding version shall be inaccurate. It is necessary therefore that the translator or translators should keep in constant touch with the members of the Code Commission in order to ascertain from them the true meaning of the english draft.

2. - For the same purpose, I would like that the Siamese translation be compared with the english text by a European adviser conversant with the Siamese language and with the Codification system. Of course, I do not think that a European advisers could correct a Siamese translation. But a young legal man having only a superficial knowledge of Siamese may ascertain whether the general sense of the provisions of the english draft has been understood or not. For instance, when the Penal Code was translated, the system of recidive provided in section 73 & 74 was not well understood. As a matter of fact, the present siamese provisions of Sections 73 & 74 do not correspond to the english draft. The difference was noticed and was mentioned to me by persons who had only a poor knowledge of Siamese. Those persons could not say how the english text ought to be translated, but they were able to notice mistranslations coming from a misunderstanding of the english text. I think therefore that an examination of both texts by one of the legal advisers of the Ministry of Justice might be very useful for ascertaining whether the siamese version corresponds to the english draft.

I the Ministry would consider the question of translation

now, and have the proper appointments made, the persons entrusted with the translation could start work as soon as the "Obligations" are printed.

**Hongkong and Shanghai Banking Corporation.**

ALL RIGHTS IN MY PATENT  
OFFICIALS HAVE BEEN TO THE  
HONGKONG & SHANGHAI BANKING CORPORATION  
AND TO INDIVIDUALS

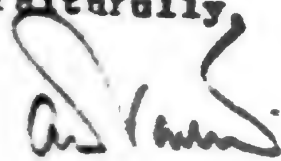
*Bangkok* 12th July 1910

Dear Mr. Padoux,

Referring to your favour of July 4th,  
I now enclose a few notes I have made on the  
subject of the Bill of Exchange laws.

I return the draft provisions herewith.

Yours faithfully,



G. Padoux, Esq.,

Bangkok.

Section 5859, 60, 104, 105.

Special arrangements would have to be made with the post office with regard to the receipts given to the holder. Unless the letter is handed to the post office open how are they going to give such a receipt. The thing seems unworkable & it would be better have a dishonoured bill presented to drawee by a notary or some such official

Section 74.

Should this not read. If the drawee refuses to accept the bill of exchange.

Section 104.

There should be some rule as to due date of bills drawn after sight or after date i.e. whether days of grace are allowed, and also what date a bill is payable on, if it falls due on a Sunday or Bank holiday.

Section 122.

Every Person not being a party to a bill of exchange can pay such bill. This should be only if the holder consents. I would point out that bills are sometimes drawn for only part of the value of the shipping documents attached to them, under those circumstances has the holder to hand over the bill & attached documents to any one who chooses to pay the bill.

Section 146.

Should this not read. A cheque can be drawn payable to bearer or



- 2 -

Section 146 (contd/-

to order. If no mention is inserted on the cheque that it is payable to bearer it is to be considered as payable to order of payee & if payees name is not inserted it is to be considered as payable to order of the drawer & to require his endorsement.

Section 150.

The time 1 year is too long. Three months<sup>are</sup> ~~is~~ quite long enough.

Section 151.

The common practice is for banks to treat cheques as stale if they are presented over 6 months after they are drawn. One year is quite long enough. What about a cheque being irregularly drawn, or postdated? Is a bank compelled to pay say when amounts in words & figures differ? As the law reads at present it would have to do so. I suggest the addition of the words "regularly" between cheque & drawn.

Section 153.

Does this mean a Bank acceptance.

Section 171.

Refers to Sections 176 & 177, but my copy does not contain those sections.



ที่ ๕/๑๐๕๔

กระทรวงยุติธรรม

วันที่ ๑๕ กรกฎาคม ๒๕๓๕

แจ้งความมายังมอชเชอร์ ยี. ปาคุช. เดปัส เดคิส แอควาเชอร์  
ตามแม่ไมแรนคำของท้าวลงวันที่ ๔ เดือนนี้หาว่า  
จะรวบรวมพระราชาบัญญัติลักษณะอาชญากรรมกระทำผิดสัญญาเข้าอยู่  
ในประมวลแห่งที่ร่างต่อไปหรือไม่ใน หม่อมเจ้าจรูญศักดิ์  
กฤษดากรผู้รั้งตำแหน่งเสนาบดีกระทรวงยุติธรรมมีรับสั่งว่า ให้  
แยกออกต่างหาก

โดยโอกาสนี้ ขอแสดงความนับถือมายังท่านด้วย

กรม  
คดี

N<sup>o</sup> 4/1098.Ministère de la justice  
15 juillet 1929à M<sup>r</sup> Tadoue, Législatif Advise

Dans le Memorandum que vous avez adressé au Ministre de la justice le 8 de ce mois vous demandiez si le contrat de "debt services" devait être incorporé dans le futur Code Civil ou non.

Le Prince Charoan, faisant fonction de Ministre de la justice, vous fait savoir qu'il est préférable que le Contrat de "debt services" ne ~~soit~~ soit pas inclus dans le Code Civil.

Je saisis l'occasion pour vous etc ...

Bangkok, July 15th 1910.

Dear Mr. Barlow,

I have referred to the english law on two of the points which we discussed this morning, viz:

- 1) discrepancy between sum in letters and sum in figures,
- 2) payment for honour.

Section 9 of the Bills of Exchange Act, 1882, reads:

" (2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable."

In Chalmers' commentary on the Bills of Exchange Act there is a note showing that the practice followed by bankers in England in respect of cheques is that the smaller sum is the sum payable.

It does not seem advisable to have two different systems, one for bills of exchange, one for cheques. I think therefore that the best solution would be to adopt the english system of Section 9 of the Bills of Exchange Act, that is to say the system proposed in the draft submitted to you. Anyway, would you agree on the principle of the english law that a cheque or a bill of exchange is not invalid by reason of there being a discrepancy between the different expressions of the sum payable. Once the

principle is admitted, we might examine afterwards whether it is better to adopt the rule of the Act ( sum in words ), or the practice of english banks ( smaller sum ).

With regard to payment for honour, the following are the provisions of the english Act :-

" 68 (1). - Where a bill has been protested for nonpayment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

" (6). - The payor for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payor for honour in damages.

" (7). - Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his rights of recourse against any party who would have been discharged by such payment. "

There is no exception or restriction in the Act concerning documentary bills. The english system is practically the system proposed in our draft, that is to say that any person not a party to a bill may pay it, even if it be a documentary bill. I would feel very reluctant to propose the adoption of restriction which would be contradictory to the rules enacted by all laws on the subject.

Very truly yours,



*Hongkong and Shanghai Banking Corporation*

*Bangkok* 18th July 1910

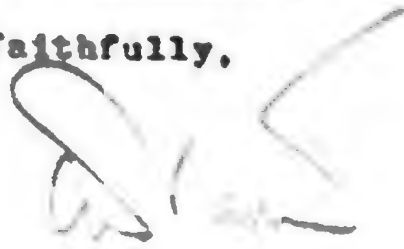
As Agents for the  
Government of the  
Straits Settlements  
and F.M.S.  
and for the  
Straits Settlements  
Government  
and for the  
Straits Settlements  
Government

Dear Mr. Padoux,

Referring to yours of July 15th, I agree with you that it would not be advisable to adopt two different systems, one for bills of exchange and one for cheques. I agree that a cheque or bill of exchange is not invalid by reason of ~~there being a dis-~~crepancy between the different expressions of the sum payable, but I certainly think that the lesser sum should be the amount payable.

I note what you say with regard to documentary bills.

Yours faithfully,



G. Padoux, Esq.,

Bangkok.

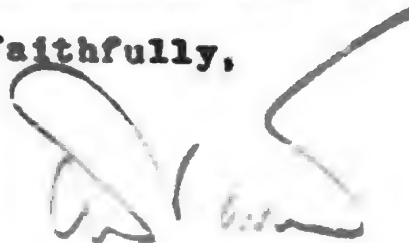
307  
*Hongkong and Shanghai Banking Corporation*  
*Bangkok* 18th July 1910

Dear Mr. Padoux,

Referring to yours of July 15th, I agree with you that it would not be advisable to adopt two different systems, one for bills of exchange and one for cheques. I agree that a cheque or ~~bill of exchange is not invalid by reason of there being a dis-~~crepancy between the different expressions of the sum payable, but I certainly think that the lesser sum should be the amount payable.

I note what you say with regard to documentary bills.

Yours faithfully,



G. Padoux, Esq.,

Bangkok.

July 18th. 1910

Dear Mr. Tilleke,

I enclose a copy of the draft provisions concerning Partnership and Companies prepared by the Code Commission for the future Civil and Commercial Code.

I would like very much to have your opinion as a business man on these draft provisions, principally those dealing with Limited Companies.

If you find anything requiring explanation, kindly let me know. I will give you any further information you may want.

You will understand that I am not acting officially, but in my personal name only. Please therefore consider the present communication as a private one.

Very truly yours.

14 309

Chartered Bank of India Australia & China.

*Bangkok.* 20th. July 1910

S. Padoux Esq.

Ministry of Justice

Bangkok

Dear Sir,

Title XVI Bills.

Referring to your letter of 7th. Instant, we beg to return a copy of the above proposed bill. We draw your attention to sections Nos. 59/60, 104, 122, 146, 150, 153 and 171 on which we comment in the margin.

I am, Dear Sir,

Yours faithfully,



Agent.

*Vu a 21 juillet 1910*

The  
Siam Importers Association.

Bangkok, July 23rd 1910

Monsieur G. Tadeux

Dear Sir

I am informed that you have more spare copies of the Draft Law on the registration of partnerships, on which you were good enough to ask the views of this Association. There are 19 members in all, and if I could have some more copies it would facilitate all the members making themselves acquainted with the provisions before the meeting, which is to take place on the 1st August. If you will have a telephone message sent me, I can send to the Ministry for such copies as you may be able to spare.

Yours faithfully

C. H. Munnie

Secretary



July 26th. 1910

Dear Mr. Mackay,

I enclose a copy of the draft provisions concerning Partnerships and Companies which have been prepared by the Code Commission for the future Civil and Commercial Code.

I would like very much to have your opinion as a business man on the provisions dealing with Limited Companies

If you find anything requiring explanation, kindly let me know. I will give you any further information you may want.

You will understand that I am not acting officially, but in my personal name only. Please therefore consider the present communication as a private one.

Very truly yours.

27<sup>th</sup> July 1910

Dear Mr Padoux

I duly received your letter of 25<sup>th</sup> together with draft provisions concerning Partnerships and Companies

I will be very glad to give some attention to the part dealing with Limited Companies and will write you later asking for an interview as I am noting some points on which I would desire your further consideration

Yours very truly

J Mackay

29th. July 1910.

**M E M O R A N D U M .**

-:-:-:-:-:-:-:-:-:-:-

Mr. Padoux, Legislative Adviser

to

H.H. Prince Charoon, Minister of Justice.

In the Charter granted to the Siam Commercial Bank on the 30th. of January 125 there is a provision, article 28,

" that all books, accounts and papers of the Company shall be open to the inspection of the Government."

Article 30 also says " that the Company shall be subject to the supervision of the Minister of Agriculture in all its acts."

Article 58 of the Charter of the Menam Motor Boat Co. granted 9th. May 126, reads:

" The Government may at any time have the books, documents and accounts of the Company examined by an inspector appointed for that purpose, in order to ascertain whether the provisions of this Charter are complied with."

There are similar provisions in the Charters of the Siam Steam Navigation Co. (9th. September 127) - of the Meklong Railway Co. (6th. October 127) - of the Transport Motor Co., - of the Bangkok City Bank (21st. August 128) - etc.

The question of inspection of Companies incorporated was considered when the first draft law concerning Partnerships and Companies was compiled in the year 119.

Article 85 of the draft runs as follows:

" The Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Law and to report thereon in such manner as the Government may direct upon the application of members holding not less than one fifth <sup>the</sup> part of the whole shares of the Company for the <sup>time</sup> being issued.

The Government may require evidence for the purpose of showing that the applicants have good reason for requiring such investigation to be made and that they are not actuated by malicious motives in instituting the same, and also that the applicants give security for payment of the costs of the inquiry, before appointing any inspector or inspectors."

The system provided by these various documents is that the Government may either on his own motion or on the application of shareholders, appoint inspectors to enquire into the affairs of the Company. The inspection is entirely left to the discretion of the Government, who may appoint or not appoint inspectors, as they think fit.

Personally, I am not in favour of that system, because the exercise of the option is likely to cause trouble to the Government.

In such matter, the Government will almost never move by themselves. I mean it is highly improbable that the Government shall order an inspection on the mere suggestion of an official. The Government will always be moved by interested persons, that is to

may by creditors or shareholders of the Company, who will come and complain to the Minister.

Whether the Government grants the application or refuses it, the action of the Government will be open to criticism. If the application is granted the Company may complain that the decision of the Government arouses suspicions as to the good management of the Co. and may injure its credit.

If the application is refused, the shareholders or creditors may complain later on that the refusal led the Company to its final ruin.

For instance, there has been a case in which Chin Yee Ko Hong prayed the Government to make an inspection of the accounts of the China Siamese Steam Navigation Co. by stating that some of the shareholders did not pay up their shares in cash, as provided by the Charter. The Government has refused the application. Suppose that in another year or two the China Siamese Steam Navigation Co. would fail, and that it be found on settling the accounts that Yee Ko Hong's contention was correct. Yee Ko Hong may say: "If the Government had appointed inspectors when I made the application, the true facts would have been discovered, the Company would have been wound up, or things would have been put right. Anyway, the money invested by me would not be lost. Now, the Company is bankrupt, the assets are reduced to nothing, my money is lost. I consider the Government is responsible for the loss." There is no doubt that Yee Ko Hong would not have a legal ground for complaining, because the Charter states that the inspection depends entirely on the discretion of the Government. But from the business



point of view, there would be something worth consideration in such a complaint.

Suppose on the contrary that the Government had ordered an inspection of the Onino Siamese Steam Navigation Co. to be made, the managers of the Co. would at once complain that the Government is taking the part of a minority of shareholders, is interfering with the affairs of the Co., and is harming the credit of the Co. without sufficient reason.

I am therefore inclined to think that the safest line for the Government to take in such matter would be either to do away with any system of inspection by the Government or to provide that inspection must be ordered, as a matter of right whenever an application to that effect is made by shareholders holding a certain percentage of shares. Then, the responsibility of the inspection would fall entirely on the person who applied for it. The Government would only have to ascertain whether the conditions required by law are complied by the applicants, and, if <sup>complied</sup> ~~satisfied~~, to appoint the inspectors. The report of the inspectors would be sent to the applicants who may submit it to a general meeting of shareholders as they think fit; The Government would have nothing to do with that report.

The following provisions have been inserted to that effect in the part of the draft Civil and Commercial Code which deals with Companies:

214. - Upon the application of shareholders holding not less than one fifth part of the shares of the company, the Minister of Justice must appoint one or more competent inspectors to examine into the affairs of any registered company and to report thereon.

217.- All expenses of such inspection must be repaid by the applicants, unless the Company, in the first general meeting after such inspection is finished, consents the same to be paid out of <sup>its</sup> assets of the company.

Practically, the proposed system consists in giving to the shareholders holding a certain percentage of the shares the right to have an inspection made of the affairs of the company, by applying to the Government. The action of the Government is limited to the selection and appointment of the inspector or inspectors.

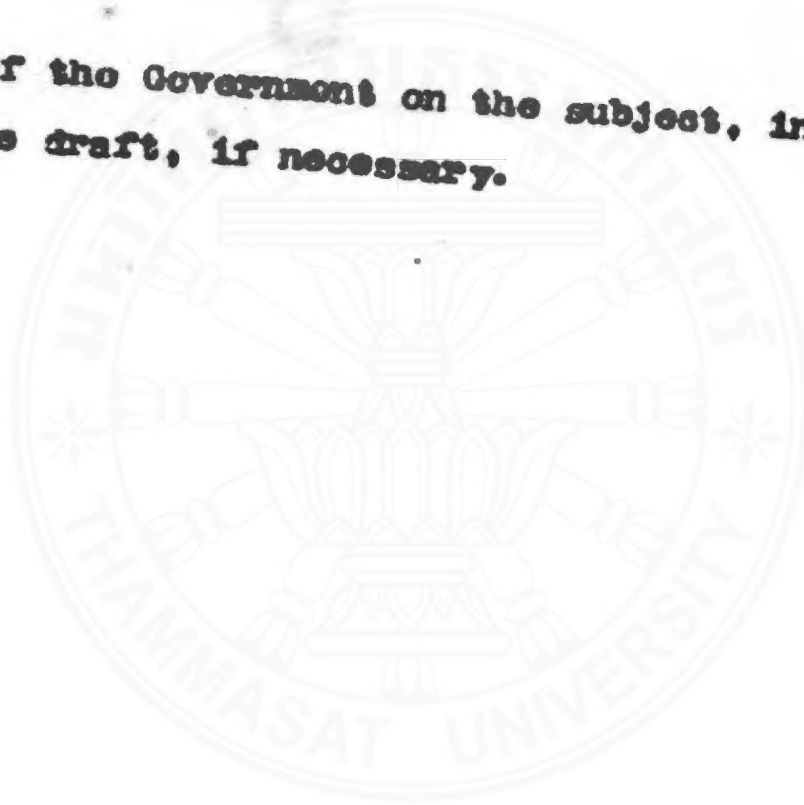
The draft provides for the appointment of the inspector by the competent Minister. If deemed more convenient, it may be provided that the inspectors shall be appointed by Court.

A provision might also be added to give to the Minister the power to order an inspection on his own motion, in order to ascertain that the provisions of the law are complied with. Such discretion would be granted only for Governmental or legal purposes. But I am afraid that, if there is such a provision, shareholders not holding a sufficient number of shares to apply for ordinary inspection would apply for inspection by the Government. The same difficulties as described above would then arise.

[illegible]

The Code Commission would be glad to know of

the views of the Government on the subject, in order  
to alter the draft, if necessary.





# END

MICROFILMED BY :

OFFICE OF THE JURIDICAL COUNCIL  
THA CHANG WANG NA,  
BANGKOK 10200,  
THAILAND.